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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 INTERNATIONAL BUSINESS
4 MACHINES CORPORATION

Plaintiff

5 v.

20 Civ. 4573 (PMH)

6 RODRIGO KEDE de FREITAS LIMA

7 Defendant

8 -----x

9 New York, N.Y.
10 July 21, 2010
9:45 a.m.

11 Before:

12 HON. PHILIP M. HALPERN

13 District Judge

14 APPEARANCES

15 PAUL WEISS RIFKIND WHARTON & GARRISON LLP
Attorneys for Plaintiff

16 PIETRO J. SIGNORACCI
17 ROBERT A. ATKINS
LIZA MAY VELAZQUEZ

18 ORRICK HERRINGTON & SUTCLIFFE LLP
Attorneys for Defendant

19 JAMES H. McQUADE
20 MARK R. THOMPSON
MICHAEL DELIKAT

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1 (Case called)

2 THE DEPUTY CLERK: Would the plaintiffs please stand
3 and note your appearance?

4 MR. ATKINS: Robert Atkins from Paul Weiss for
5 plaintiff IBM.

6 THE COURT: Good morning.

7 MR. ATKINS: Good morning.

8 MR. SIGNORACCI: And Pietro Signoracci from Paul Weiss
9 for plaintiff IBM.

10 THE COURT: Good morning to you as well.

11 MR. SIGNORACCI: Thank you, your Honor. Liza May
12 Velazquez from Paul Weiss for plaintiff IBM.

13 THE COURT: Good morning.

14 MR. DELIKAT: Good morning, your Honor. Mike Delikat
15 from Orrick Harrington for the defendant Lima.

16 THE COURT: Good morning, counsel.

17 MR. McQUADE: Good morning, your Honor. James McQuade
18 from Orrick for defendant Rodrigo Lima.

19 THE COURT:

20 MR. THOMPSON: Good morning. Mark Thompson for
21 defendant Rodrigo Lima.

22 THE COURT: Good morning.

23 I am glad everybody is here; we are socially
24 distanced. I was anticipating that counsel, if you are
25 interested, might make a brief opening statement and I would

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Opening - Mr. Atkins

1 like to make one when you are both done.

2 Is there anything you would like to emphasize,
3 Mr. Atkins, at the beginning?

4 MR. ATKINS: I don't want to take too much of the
5 Court's time because we have a lot of testimony to get through.
6 I think I will just introduce you to the witnesses in advance,
7 who you will be seeing today. The first witness we will be
8 calling is Mr. Randy Walker. He is the man responsible for,
9 among other things, the financial services cloud which will be
10 the subject matter of much testimony. The second witness will
11 be Juan Zufiria who was Mr. Lima's supervisor or boss during
12 2019, and the last will be Bridget Van Kralingen, who was
13 Mr. Lima's boss during 2020. Each of them will testify to
14 Mr. Lima's access to and knowledge of IBM confidential
15 information and trade secrets, hopefully answering the
16 questions you had when we had the TRO argument. I think you
17 will find that the record, now, of testimony and documents
18 produced, and there were somewhere -- correct me if I am wrong,
19 team -- but something north of a hundred thousand pages of
20 documents produced, texts, e-mails, demonstrate that Mr. Lima
21 was exposed to, participated in, and generated confidential
22 information trade secrets across a wide range of subjects. I
23 think that you will see that by virtue of his high level of
24 seniority he was, if you will, your Honor, in the room, both
25 literally, remotely now, in some of the highest level

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Opening - Mr. Atkins

1 discussions at IBM -- board of directors meeting, leadership
2 teams, meetings with the chair and CEO, both the former and
3 current one discussing corporate strategies worldwide across
4 the entire portfolio of IBM products and services. So, he left
5 IBM immersed in confidential information relating to virtually
6 every aspect of IBM's business. I think there is little
7 dispute, though you will hear much argument that IBM and
8 Microsoft are competitors and indeed fierce competitors, and
9 though Mr. Lima is now proposed to take a job in one
10 geography -- one of the largest geographies on the planet,
11 Latin America -- his job will be to compete against IBM to take
12 sales from IBM, to win share away from IBM, and to do that
13 knowing what IBM's strategies are worldwide and thus, in Latin
14 America, to defeat Microsoft, and to do so with new
15 initiatives, new products, new strategies, new offerings, and
16 he has been put in the position where it is inevitable,
17 notwithstanding his professed good faith and intentions, it
18 will be inevitable that he will call upon, rely on, use what he
19 knows about IBM in developing, contributing to the creation of
20 Microsoft's global strategies and implementation of those
21 global strategies in Latin America. And, as your Honor is
22 aware from the papers, the inevitable disclosure doctrine does
23 not require the actual physical nest of trade secrets, the
24 actual misappropriation in the sense of downloading and
25 removing data and documents. It requires putting the person in

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Opening - Mr. McQuade

1 a competitive position such that notwithstanding best
2 efforts -- and there is a question about whether he will make
3 best efforts or Microsoft will make best efforts -- but
4 notwithstanding the best of intentions, being put in a position
5 knowing the playbook of the competitor that it is inevitable
6 that he will be called upon, will rely on, will use what he
7 knows about IBM. And that's exactly what he bargained not to
8 do, it's why he stipulated the noncompete agreement, that a
9 confidentiality provision or agreement is insufficient. You
10 will hear him testify that he agrees that there should be
11 mechanism to prevent former employees from going to competitors
12 even in the face of a confidentiality agreement.

13 And so, for those reasons, as we will walk through the
14 testimony, we think we have more than established sufficient
15 evidence to warrant a preliminary injunction to prevent
16 Mr. Lima from taking this proposed job at Microsoft.

17 THE COURT: Thank you.

18 MR. ATKINS: Thank you, your Honor.

19 MR. McQUADE: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. McQUADE: The evidence from the documents and the
22 seven depositions that were conducted during the expedited
23 discovery in this case, as well as the live testimony and
24 videotaped testimony and zoom testimony that your Honor will
25 hear over the course of this two-day hearing, will establish

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Opening - Mr. McQuade

1 that IBM is unable to carry its heavy burden for the
2 extraordinary relief it seeks here in this court. That's for a
3 number of reasons, your Honor.

4 First, Mr. Lima has accepted a position at Microsoft
5 which is unrelated to any position he had held at IBM over the
6 course of the last three years, and Microsoft has intentionally
7 shaped that role to assure that no confidential information he
8 may have learned at IBM will be implicated in his new job at
9 Microsoft.

10 Second, none of the confidential business information
11 that Lima may have been exposed to is of any interest at all to
12 Microsoft or of any use to Lima in his position at Microsoft.
13 What IBM describes as the major battleground for technology,
14 the battle for business cloud services, Microsoft has a market
15 share that is 10 times the size of IBM's. The business
16 community publicly and uniformly has characterized IBM's
17 strategy on cloud as a complete failure and IBM is only now
18 trying to pivot to be more like leaders in cloud like Amazon,
19 Microsoft, and Google. Lima's knowledge of IBM's failed
20 strategy in cloud and services and IBM's plan to chase the
21 market leaders like Amazon, Microsoft, and Google will not be
22 intentionally or inadvertently shared with his new employer.

23 Third point, your Honor: No client relationships with
24 which Lima had substantial involvement over his last three
25 years at IBM is in any way at risk for IBM given Lima's

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Opening - Mr. McQuade

1 geographically based responsibilities for only Latin America
2 and the restrictions that Microsoft has already placed on his
3 client contacts. Microsoft and Lima proactively agreed that
4 Mr. Lima would be precluded from contact with a group of 77 IBM
5 clients that Mr. Lima worked with in his most recent role at
6 IBM, as well as any customers that Mr. Lima worked with as part
7 of his IBM partnership executive program for a period of one
8 year following his resignation from IBM. These restrictions
9 are sufficient to protect IBM's customer relationships.

10 Fourth. You will hear today from a number of
11 witnesses -- from each of IBM's witnesses, I believe -- that
12 Mr. Lima is a person of integrity who respects IBM's
13 confidential information and has pledged not to reveal or
14 leverage any of have information in his new role. The
15 protection of trade secrets is the policy reason behind
16 noncompete agreements and without a legitimate threat to
17 confidential information, restrictions on employment cannot be
18 justified and they're not justified here.

19 Fifth point. IBM's interpretation of its and
20 Mr. Lima's noncompetition agreement is inconsistent with New
21 York Law because it does not protect legitimate interests.
22 It's unreasonable in time and scope and it is unreasonably
23 burdensome to Mr. Lima and it is harmful to the general public.

24 Six. If the Court grants this injunction, the
25 injunction that IBM seeks here, Mr. Lima will be required to

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Opening - Mr. McQuade

1 pack his bags and the bags of his wife and his two children,
2 get on a plane and travel to Brazil, a country that has been
3 described in the press as a COVID-19 nightmare. In doing so,
4 he will have to uproot his two young children from their
5 schools in Greenwich, Connecticut to attend an unfamiliar and
6 very different school system in Brazil as early as a couple
7 weeks from now.

8 IBM's aggressive tactics are not new. IBM has
9 repeatedly tried to prevent employees from working for other
10 tech companies in any capacity for 12 months, a strategy
11 designed to retain talent rather than to protect trade secrets.
12 Your Honor is familiar with the *Visentin* case, a case in which
13 the Court held that IBM's noncompetition agreement is designed
14 not to protect a legitimate business interest but rather to
15 keep the leadership talent of IBM from leaving. This case
16 presents even a more compelling set of facts than the *Visentin*
17 case did. The evidence will show that IBM has evoked this
18 judicial process not to protect its trade secrets which are of
19 no use to Mr. Lima and of no use -- or of any interest to
20 Microsoft but to discourage its executives from leaving by
21 making examples of those who choose to advance their careers
22 elsewhere.

23 That's our position, your Honor. We intend to present
24 three witnesses over the course of the hearing, one via
25 videotape deposition which the parties have agreed to, one via

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1 the zoom platform who will be testifying from Europe, and
2 Mr. Lima himself.

3 Thank you, your Honor.

4 THE COURT: Thank you, counsel.

5 Let me say this. I know, because I have read a number
6 of these cases, that all of you are extremely familiar with
7 this issue and I have now looked at some of these cases. I
8 want you to pinpoint for me the issues that I have to deal
9 with. There is a contract provision that has elements to it
10 and IBM suggests that they've met all the elements. The proof
11 should be directed at those elements and none other.

12 You have also claimed in your common law trade
13 misappropriation that there are trade secrets. They have to be
14 secrets. There is a test. Both of you have pointed me in the
15 direction of the test. If you want to pursue that line you
16 will need to give me proof and no other proof. I am not
17 interested in debating how many angels there are on the head of
18 a needle, I am interested in understanding what proof we have
19 to address the contractual obligation that exists, both sides
20 acknowledge it, I want to know is there proof or not, and as to
21 the common law cause of action claim for relief that's being
22 pursued, are there trade secrets here. Okay? So, that's one
23 point. I don't need anything else, that's what I am here to
24 do. We are going to call balls and strikes on each of these
25 issues and we are going to get to it promptly.

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1 Now, one other issue. After you were kind enough to
2 follow my rule I modified your protective order slightly to
3 decide that the Court will decide -- not nonparties, not
4 parties -- what is and what is not to be sealed. In
5 anticipation of these issues, because they're referred to in
6 all of the cases, I directed all of you to Magistrate Judge
7 Davison, whom I have high regard for on discovery issues, and I
8 asked you, please, go to him and solve your discovery issues so
9 that I don't have to and so that I can stay focused on the
10 merits and not the sideshow of what should be sealed or not.

11 Apparently -- I am inferring because I got a letter at
12 10:45 last night, ECF -- that we haven't met and conferred on
13 that subject, we have no agreement on that subject, and
14 certainly you haven't gone to see Magistrate Judge Davison.

15 So, what I would suggest, as a practical solution, you
16 have me for two days. I assume you don't want me to go
17 document by document and decide what should be sealed. I would
18 urge each side to get one person who is authorized, go outside,
19 go in the jury room -- they should socially distance -- see if
20 you can get Magistrate Judge Davison on the phone and figure
21 out by agreement or otherwise what should be sealed and what
22 should not. I'm not wholesale sealing anything, the public has
23 an interest here. We are in court fighting in a public forum
24 over a contractual provision but I will protect and I will seal
25 those items that need to be sealed. The law is very clear.

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1 Okay?

2 So, I am putting it to counsel to please maybe take a
3 group, figure out how you want to deal with the sealing. As an
4 alternative to that, I am happy to spend my two days going one
5 document at a time out of infinite patience for all of you, I
6 will do it one at a time, we will go through each and every
7 request one at a time but at the end of the two days I have to
8 go to the next thing so I won't have time to hear your
9 witnesses, if that's how we spend our time.

10 So, I am encouraging you politely to please figure out
11 amongst yourselves how you are dealing with the sealing issue
12 before Magistrate Judge Davison while we hear testimony. If I
13 am feeling the vibe here, I think we can start taking testimony
14 without having to run into sealing immediately. I may be wrong
15 about that. Counsel? Okay? Can we arrange that while we are
16 beginning our preliminary injunction here?

17 MR. DELIKAT: Yes. Thank you, your Honor. I think
18 that's a thoughtful suggestion. We would also hope, because we
19 only have two days, that one day each roughly can be allotted
20 to each side to be able to present their cases and not get
21 caught up in the minutia of going document by document.

22 THE COURT: I get it. I don't know about the one day
23 each but I'm going to hear everybody fully because I need to
24 and I want to, I am interested in understanding every scrap of
25 testimony here, and documentation.

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Walker - Direct

1 So, all right. With that, Mr. Atkins?

2 MR. ATKINS: We call our first witness, Randy Walker.
3 Mr. Signoracci will present the witness who is joining us
4 remotely, I believe.

5 THE COURT: We are anticipating this will work
6 flawlessly, this is the Southern District of New York.

7 The record should reflect that I see Mr. Walker. I
8 assume that is you, Mr. Walker?

9 THE WITNESS: Yes, sir, it is.

10 THE COURT: I didn't think there would be any
11 interlopers.

12 THE DEPUTY CLERK: Okay, great. Mr. Walker, just
13 raise your right hand, please.

14 RANDY I. WALKER,

15 called as a witness by the Plaintiff,

16 having been duly sworn, testified as follows:

17 THE DEPUTY CLERK: Mr. Walker, please state your name
18 for the record and spell it slowly.

19 THE WITNESS: Randy I. Walker.

20 DIRECT EXAMINATION

21 BY MR. SIGNORACCI:

22 Q. Mr. Walker, can you hear me all right?

23 A. I can.

24 Q. Excellent.

25 Mr. Walker, where do you reside?

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Walker - Direct

1 A. 6844 Sunrise Court in Coral Gables, Florida.

2 Q. And is that where you are testifying from today?

3 A. That is correct.

4 Q. And you are there because of the COVID-19 situation,
5 correct?

6 A. That is correct.

7 Q. Mr. Walker, by whom are you employed?

8 A. IBM.

9 Q. And prior to the COVID-19 situation, where was your work
10 located?

11 A. 590 Madison Avenue, in New York, in Manhattan.

12 Q. What is your current position at IBM?

13 A. My current position is I'm the global managing director for
14 financial services. I am the acting general manager for
15 integrated accounts for IBM. I am also a member of the
16 performance team and the acceleration team.

17 Q. Thank you.

18 How long have you held the role as acting general
19 manager of integrated accounts?

20 A. Since mid-May.

21 Q. And why did you succeed to that role?

22 A. When Rodrigo left Bridget Van Kralingen asked me to take on
23 the acting role at that time.

24 Q. And when you referred to Rodrigo, that's the defendant in
25 this case, Rodrigo Lima?

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Walker - Direct

1 A. That is correct.

2 Q. Thank you.

3 Can you tell us about your working relationship with
4 Mr. Lima before he resigned from IBM?

5 A. Yes.

6 Rodrigo and I had been colleagues for 15 plus years in
7 a number of roles when I was in Asia and he was in Latin
8 America. We worked closely together last year when I was the
9 managing director for AT&T.

10 THE COURT: The court reporter needs to be able to
11 transcribe everything so if you wouldn't mind, if it is not
12 normal or unnatural, keep your voice up, please.

13 THE WITNESS: I will. I will.

14 (Record read)

15 A. And then at the beginning of this year I took the new
16 role -- sorry, there is a lot of background noise here.

17 So, at the beginning of the year when I took on the
18 global managing director of financial services, I worked
19 closely with Rodrigo in his role as the general manager for
20 integrated accounts.

21 Q. And you mentioned some teams that you participate on. Did
22 you work with Rodrigo on those teams as well?

23 A. Yes; both Rodrigo and I have been long time members of the
24 IBM performance team which is the-handpicked by our CEO that
25 run -- the performance team is handpicked by the CEO, it is the

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Walker - Direct

1 top 60 execs in IBM and the purpose of that is to run the
2 company both operationally and strategically. We are also part
3 of the acceleration team, that is the top 300 execs at IBM and
4 that is to lead the strategy and execution to accelerate IBM's
5 growth.

6 Q. And you said that you succeeded to the role of general
7 manager of integrated accounts when Rodrigo resigned. I will
8 state for the record that we are currently in open court, in
9 public, so I will ask you to keep your answers at high level
10 but can you tell us about IBM's integrated accounts business?

11 A. The integrated accounts is a program where it was
12 established by our CEO actually where we select the top
13 accounts, the most strategic accounts for IBM, and on those
14 accounts we put a director -- I'm on it with a full-time team
15 to focus on those accounts both tactically around the execution
16 but also strategically around building partners with --
17 currently we have 77 of those accounts around the world and
18 they cut across all of our industries and all of our geography.

19 Q. And who reports to you in your role as the general manager
20 of integrated accounts?

21 A. In my role in the integrated account role I have two sets
22 of individuals; I have a core team which handles the broker
23 managed side of the integrated accounts, HR, strategy, finance,
24 the core team, and then all of the 77 managing directors around
25 the world report to me from my integrated accounts role.

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Walker - Direct

1 Q. And to whom do you report?

2 A. Bridget Van Kralingen, who is the senior VP of global
3 markets.

4 Q. And this is the role that Rodrigo Lima had when he
5 resigned, correct?

6 A. Correct.

7 Q. Do you know what his previous role was?

8 A. Yes. Rodrigo was the general manager of global technology
9 services for North America.

10 Q. And you referred to global technology services as GTS; is
11 that correct?

12 A. That is correct.

13 Q. What does IBM's GTS business do?

14 A. IBM's GTS business, it provides technology services in
15 support of our clients, that is everything from tactical
16 technology services installing and running data centers,
17 computer systems, software to our large -- leading our large
18 complex relationships, transformational deals, and partnerships
19 that we have with clients.

20 Q. And, to your knowledge, what were Rodrigo's
21 responsibilities in that role?

22 A. In that role as global technology services he had the
23 responsibility for the profit and loss, the strategy, the
24 execution for global technology services for North America
25 which included in that role the global firms that were U.S.

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Walker - Direct

1 headquartered. So, he would be taking responsibility for AT&T,
2 Wal-Mart, Citi, other global clients, but the local geo where
3 they're headquartered would be taking responsibility for those.

4 Q. And now that Mr. Lima has resigned from IBM, do you have an
5 understanding of what he plans to do next?

6 A. My understanding is this: Corporate executive vice
7 president for Latin America for Microsoft.

8 Q. Thank you.

9 I would like to go back through just a little bit of
10 your background. Can you tell us how long you have worked for
11 IBM?

12 A. Initially joined IBM in '97. I worked in IBM to 2002. I
13 left for three years to join a company called SAIC based in San
14 Diego. And then I rejoined IBM in 2005 and I have been
15 employed by IBM continually since then.

16 Q. And, just generally, what type of a company was SAIC?

17 A. SAIC is a federal government U.S. systems integrator. A
18 primary client would be federal U.S. government.

19 Q. Can you tell me, before your professional career, did you
20 attend college?

21 A. Yes. I attended Georgia Institute of Technology. I have a
22 bachelors degree and a masters degree in electrical
23 engineering.

24 Q. And where did you work before joining IBM?

25 A. Post-college I worked for Digital Equipment Corporation.

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Walker - Direct

1 That was out of Greenville, South Carolina, and Atlanta,
2 Georgia, for approximately seven years. Then I joined Deloitte
3 & Touche. I joined Deloitte & Touche as a managing consultant
4 in Saudi Arabia for their Middle Eastern practice. Then I
5 returned to the U.S. -- Philadelphia -- with Deloitte & Touche
6 in the U.S. and then I joined IBM.

7 Q. Thank you.

8 And turning back to your current role at IBM, can you
9 tell me what are some of the main types of products or services
10 that IBM provides that you are responsible for?

11 A. I am responsible for the entire IBM portfolio of products
12 solutions, and services to our clients. They would go from a
13 strategic standpoint -- our high-grade cloud offering which are
14 most strategic; we would have our AI -- our artificial
15 intelligence and cognitive solutions which is applying AI
16 capability to support our clients. We also have software, we
17 also have services and we also have hardware.

18 MR. SIGNORACCI: I would like to focus on cloud and,
19 your Honor, we have prepared a few demonstrative slides to
20 accompany Mr. Walker's testimony. I have copies of those that
21 I can hand out, if permitted.

22 THE COURT: Defense counsel?

23 MR. McQUADE: No objection, your Honor.

24 THE COURT: Okay. Should we mark them as exhibits?

25 MR. SIGNORACCI: Yes, we can mark this as Plaintiff's

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Walker - Direct

1 Exhibit 1.

2 THE COURT: Terrific.

3 MR. SIGNORACCI: It is the first table of the binder.

4 THE COURT: Thank you.

5 BY MR. SIGNORACCI:

6 Q. Mr. Walker, can you see the slides on the screen?

7 A. I cannot -- yes, I can.

8 Q. Can we turn to slide 2? Please, Mr. Walker, I would like
9 you to explain about IBM's Cloud, if you could.

10 A. So, I will start, you really think of cloud in two
11 chapters. The first, before the first chapter of cloud most
12 enterprise firms ran their IT or information technology on
13 computer systems, mainframes or other servers that were on
14 their premise that placated to them and it ran very secure in a
15 local environment. IBM is a leader in that area with our
16 mainframe, our hardware, and our software. Cloud started when
17 Amazon started running their own internal cloud, started to see
18 that, hey, we could leverage the capacity that we have which is
19 very seasonal with Amazon maybe more for the holiday season
20 that we could sell our capacity to others and allow them to use
21 that capacity in doing that. And so, they established their
22 AWS theory and created a public cloud. They were very
23 successful, as we would say, moving items that we would call
24 cloud native, things that were not running in a data center
25 before, things that were not running internal to a client

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Walker - Direct

1 before, having those run on that public cloud. Examples would
2 be consumer data, would be videos, would be other. That was
3 shown to be very successful on the consumer side so others
4 joined in. Microsoft joined in, Google, IBM, all competitors
5 in this space really looking at that consumer side or moving,
6 e-mail, Office 365, other application to that public cloud.
7 IBM bought a company called Softlayer and Softlayer was IBM's
8 strong entry and investment to move into that public cloud
9 space.

10 So, then you had public cloud which is running in a
11 shared public infrastructure. Also with clients we said we
12 would like to get some benefits of the Cloud, the availability
13 in those items. But for our core uploads we don't have the
14 security, encryption that we need in a public cloud so they
15 built private clouds. These are a cloud that runs within the
16 four walls or within the data centers of their enterprise so it
17 is dedicated to them and that has the security requirements
18 that they need to run as a private cloud.

19 So, the clients today would have things running on
20 their existing infrastructure, we would call that on their
21 mainframes, on their servers on prem. They could have a
22 private cloud running things in a private cloud in a private
23 environment just to them and then they could have consumer
24 application and the customer basing born on the cloud
25 applications running in a public cloud.

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Walker - Direct

1 What our clients are moving to now is not wanting to
2 have three separate -- on prem, private, and public -- but they
3 want to run in a what we would call a hybrid cloud environment.
4 In a hybrid cloud environment you run workloads and
5 applications in the area where it makes the most sense.
6 Security requirements typically would keep it on prem or
7 private, public information, videos, those kind of things you
8 would run on a public standpoint. So, that's the work today
9 of -- everyone, what we are focused on is hybrid cloud helping
10 our client run their work in their environments where it makes
11 the most sense whether it is on their mainframe, on a private
12 cloud, or on a public cloud.

13 THE COURT: Mr. Signoracci, I just want to clean up
14 one item. We are talking about a document that we have
15 identified but not offered into evidence. I assume it is your
16 intention to offer it without objection so I am going to mark
17 it in evidence as Exhibit 1.

18 MR. SIGNORACCI: Yes, your Honor. We will offer the
19 entire slide deck as Exhibit 1.

20 THE COURT: Thank you.

21 MR. DELIKAT: Your Honor, just with the caveat that it
22 is a demonstrative exhibit prepared by counsel and not an
23 actual document from email or something.

24 THE COURT: I take it as a non-business record. You
25 are kind enough accede to the presentation, it is helpful, I

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Walker - Direct

1 take it for what it is.

2 (Plaintiff's Exhibit 1 received in evidence)

3 BY MR. SIGNORACCI:

4 Q. Just before we move from this document, this slide,
5 Mr. Walker, can you tell us where in these three types of
6 clouds IBM competes against Microsoft?

7 A. In all three.

8 Q. Moving to slide 3, can you walk through these points for
9 us?

10 A. Yes.

11 So, as I said, in chapter 1, the workloads that moved
12 to cloud were primarily consumer workloads, non-core data, and,
13 as we said, cloud native. Cloud native are applications that
14 were not built in core and then moved to a cloud, they were
15 applications that were built originally on the cloud, things
16 like sales force applications that were built and always had to
17 operate within the cloud. So, these big sets of workloads over
18 the past 10 years that have been moving to cloud have been
19 those and that's where the large growth in cloud has come.
20 That's -- approximately 20 percent of the workloads have moved
21 to cloud today. That is higher in some areas like consumer and
22 much lower in areas that are regulated where they haven't been
23 able to move because of regulatory requirements.

24 So, the first 20 percent is where Chapter 1 has been.
25 The 80 percent is still where the work is to be done around

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Walker - Direct

1 enterprises, around core data, and where there is regulatory
2 and heightened security.

3 THE COURT: If I may, Mr. Walker? When you say work
4 to be done do you mean sales work to be done or technical work
5 to be done? What do you mean when you say work to be done?

6 THE WITNESS: The work to be done is when you look at
7 gaining the value of cloud that an enterprise can get. With
8 running in a cloud you can get shared infrastructure, you can
9 get flexibility, you can get economies of scale, you can get
10 seasonality. So, there is benefits of a client running these
11 workloads in a cloud. The issue is for a loft these workloads,
12 especially the ones that run on their mainframe on site,
13 they're not able to get that benefit of scale and flexibility
14 yet because they don't have the security and capability to do
15 that so we are saying that 80 percent is we can move it to
16 cloud and get the benefit but it hasn't been done technically
17 yet because of regulatory requirement.

18 THE COURT: I see. Thank you.

19 MR. SIGNORACCI: Thank you.

20 BY MR. SIGNORACCI:

21 Q. Next slide, please, Ashley.

22 And for that 80 percent, Mr. Walker, can you tell us a
23 little bit about the competition -- and we will start with this
24 slide -- the competition at the level of the cloud itself?

25 A. Yes.

K7L5ibm1

Walker - Direct

1 So, at the cloud itself there is multiple providers --
2 Amazon, Microsoft, Google, IBM, Alibaba -- there is others so
3 there is the cloud providers. So, the cloud providers are the
4 ones that run the cloud, have the software that runs on the
5 cloud. They provide the cloud services to run the workloads
6 and the application. Typically most clients have more than one
7 cloud, one would be multi cloud. Different work loads run
8 better on clouds. Amazon had been strong on video workloads
9 like Netflix and others. Google is strong in areas of data and
10 AI. So, typically with a client they would have sometimes two,
11 sometimes as many as three or four clouds that they run based
12 on where the application runs best and so they run multiple
13 clouds.

14 Q. Ashley, next Slide, please.

15 Can you tell us what else goes into the competition
16 aside from the cloud-to-cloud mode?

17 A. So, when you are talking cloud you think of just running
18 the infrastructure so it's a place that you can run software,
19 you can run applications, you can store data. With
20 born-on-the-cloud pieces it was directly put on the cloud but
21 as you start in the area of enterprises there is a lot of work
22 that has to go to take what's running currently on a mainframe
23 or a server and do the work to prepare it on the cloud. A lot
24 of services work goes around this, the applications and the
25 workload, to prepare them to get the benefits of cloud. You

K7L5ibm1

Walker - Direct

1 have to do some migration work, you have to do testing. There
2 is a large piece of services that go around those and there is
3 also a lot of software that runs on those to help make those
4 clouds successful.

5 So, with IBM, we are an integrated firm and we have
6 not only the IBM cloud but we also have IBM software that runs
7 on that cloud and then we also have IBM services which help IBM
8 and others and the IBM cloud and other clouds help work with
9 those applications to move those to the cloud. Our competitors
10 typically have, are in a single area. So you would have, for
11 instance, Microsoft would have their cloud and software that
12 they would typically partner with a services provider --
13 Accenture, Pipro, the Indian firms -- to work with clients to
14 take those applications, those workloads, determine where best
15 to run it, and then help to prepare and move them to the cloud
16 and also, once you move them to a cloud, to run the
17 environment. There is, as I said, there is usually multiple
18 clouds so it gets complex when you have a Microsoft cloud, an
19 IBM cloud, a Google cloud, you need someone to help you, an IBM
20 services or an Accenture to help you run these different clouds
21 so that they work best together and that you keep consistency
22 across the cloud is.

23 Q. Thank you.

24 And you refer to clients as enterprise clients. Can
25 you tell us what you mean by enterprise?

K7L5ibm1

Walker - Direct

1 A. Correct. So, when you have, at least consumer-facing ones
2 like a Netflix or HBO or others that are consumer-facing
3 companies. When we refer to enterprise what we are talking to
4 are our core enterprise clients, the large banks around the
5 world, it would be the large telcos around the world, the large
6 retailers, it would be the insurers, it would be the
7 government. So, enterprise would be the large, the company
8 that we have that would be large enterprises with large IT
9 entities is how we would characterize those.

10 Q. Thank you.

11 Ashley, next slide, please.

12 Mr. Walker, you tell us how IBM perceives its next
13 chapter in the battle for cloud? Can you tell us, to your
14 knowledge, how IBM sees Microsoft battling for Chapter 2 in the
15 cloud?

16 A. Well, from a competitive standpoint in cloud, Microsoft is
17 our biggest and our most concerning competitor. AWS has
18 focused on -- their history has been more on the consumer side.
19 Google, their history has been more on the search engine side,
20 that's their heritage comes from the search engine side of the
21 house. So, both Google and AWS are very strong consumer-facing
22 applications. IBM and Microsoft, our core has been in the
23 enterprise helping large clients -- big insurers, big banks,
24 big government -- help them to run these in that environment.
25 So, we are very concerned because our core is taking what we

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Walker - Direct

1 knows know with enterprises and we have worked with them over
2 the past one hundred years to transform and move, and Microsoft
3 has that same capability because with their office products and
4 applications in areas they are also very strong in the
5 enterprise space.

6 So, as Microsoft is moving more from consumer into
7 enterprise, we are now almost every client we are seeing them
8 as a competitor in each one of our large enterprise clients.

9 Q. Thank you, Mr. Walker.

10 Next slide, please, Ashley.

11 You mention that are you helping big banks move to the
12 cloud. Again, we are in open court and this is a public
13 record. Can you tell me about IBM's plans to help big banks
14 move to the cloud?

15 A. So, as I said in chapter 2, the 80 percent that hasn't
16 moved to a cloud yet, the reason that hasn't moved to a cloud
17 is because of government regulatory requirements, securities
18 requirements, encryption requirements -- data encryption
19 requirements. So, even if large regulated industries wanted to
20 move their data and their information to cloud, they can't,
21 because they can't get government and regulatory approval. So,
22 with IBM last year we took some parts that we have. So, we
23 acquired -- a couple years ago we acquired a company called
24 Promontory. Promontory, they work with the regulators, the
25 banking regulators, the insurance regulators, helping those

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Walker - Direct

1 regulators work with the bank around how do we set up safe and
2 secure regulation which protects the financial information.
3 And Promontory is the leader in that area around the world and
4 they have the domain expertise around regulatory requirements,
5 security requirements, privacy requirements not only for the
6 U.S. but they operate with most of the regulators around the
7 world. So, we have a deep domain expertise in how to work with
8 regulators and with the large banks and insurers on how to meet
9 those regulations.

10 Q. And that was Promontory?

11 A. That was Promontory.

12 Q. And you said you pulled some pieces together. What were
13 the other piece or pieces?

14 A. So, that's Promontory. The second is we acquired Red Hat
15 last year so it is the largest acquisition that IBM had ever
16 done. What Red Hat is really, really good for and known for is
17 working with multiple clouds helping to run data that is in
18 different areas -- public cloud, it could be public cloud, it
19 would be on premise. They are very good at being able to put
20 those in containers that then you can run on a cloud. So, as I
21 was saying, you can't just move an application from your
22 mainframe to run on a cloud, it won't work. You have to
23 have -- [inaudible] So, when you are taking the applications
24 and data that's running on a mainframe, you can't just lift and
25 move that to a cloud, you have to do the work to make it

K7L5ibm1

Walker - Direct

1 available so it will be optimized to run on the cloud. Red Hat
2 is the leader for helping to take those, what's running on a
3 mainframe or an on-premise, be able to put that into what we
4 call containers which then allows it to run on a cloud and that
5 cloud is, can run on an IBM cloud, it can run on a Microsoft
6 cloud, it can run on a Google cloud.

7 So, by acquiring Red Hat we really have the leader
8 from how do you take these applications and workloads that run
9 on premise and will allow us to move those to a cloud. So, you
10 have regulatory capabilities and you have the software and
11 capabilities moving to a, as we would call Red Hat is the best
12 at moving to a hybrid cloud, both a mixture of public and
13 private and on prem.

14 We then combined that with a partnership with Bank of
15 America. We announced last year Bank of America, working with
16 us, to set the standards with the U.S. regulators on how can we
17 have a financial services cloud that you can move these core
18 workloads and run them in the cloud and do that in a safe,
19 secure, and encrypted way. So, that's the announcement that
20 brings together our regulatory capabilities, a leading bank as
21 our anchor client in the U.S. along with our Red Hat
22 acquisition for a solution that no one else has in the market
23 place.

24 Q. Thank you.

25 And you said that that has been announced. What

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Walker - Direct

1 remains secret about this project?

2 A. So, what we announced is that we were developing this FS
3 cloud with Bank of America. This is a multi-year initiative.
4 So, we announced the work was starting last year. We have
5 announced in our think forum -- one of our industry events --
6 some of the functionality that we will be bringing out. We
7 have announced some of the partners we are working with. This
8 is all working to a go-live and availability to the market for
9 1 of 2021. So, this is a deep work effort, a lot of solutions,
10 and so we are in the middle of developing this with a plan to
11 release this the beginning of next year.

12 Q. And other than the upcoming release, is there anything else
13 secret about where IBM is going with its financial services
14 cloud?

15 MR. DELIKAT: Objection.

16 THE COURT: I'm not sure what you mean by secret.
17 Tell me what you are driving at.

18 MR. SIGNORACCI: Things that IBM is working on that
19 have not been announced to the market.

20 THE COURT: Are you telling me that the testimony
21 would relate to a trade secret?

22 MR. SIGNORACCI: Your Honor, at this level we plan to,
23 at a high level, have Mr. Walker talk about the categories of
24 trade secrets that relate to the financial services cloud and,
25 with your Honor's permission, we intend later in Mr. Walker's

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Walker - Direct

1 testimony to introduce just two exhibits that are highly
2 confidential because they contain information relating to trade
3 secrets.

4 THE COURT: What's your objection?

5 MR. DELIKAT: Leading objection. I know this is a
6 bench trial and you are very sophisticated --

7 THE COURT: You are kind.

8 MR. DELIKAT: -- but the question could be asked in
9 such a way that they don't suggest the response to the witness.
10 You have offered a lot of latitude with this demonstrative that
11 was created by the Paul Weiss.

12 THE COURT: I think that is well taken.

13 I think leading the witness doesn't help me because
14 the testimony, as you know, is evidence, not your question.
15 So, rephrase your question and let's see if we can get past the
16 objection without me having to rule on it.

17 MR. SIGNORACCI: Thank you, your Honor.

18 BY MR. SIGNORACCI:

19 Q. Mr. Walker, can you tell us more about what IBM has not
20 released to the market about the financial services cloud?

21 A. Well, with cloud and with our financial services cloud it's
22 not just you buy the cloud. It is not a product, it is not a
23 you buy a piece of hardware, you buy a software. You buy a
24 whole ecosystem and with that there is functionality that comes
25 that we are going to have in this financial services cloud that

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Walker - Direct

1 no one else has. There is regulatory ways that handle the
2 regulation, the security, the encryption pieces that are trade
3 secrets that no one has access to and how we do that. We are
4 going to be announcing key partners that are working very
5 closely with us both in the U.S., around -- partners around the
6 U.S. that we are doing and these are like software vendors that
7 will be running their software and certifying it through our
8 cloud. And then, finally, we started this for the U.S. but we
9 have anchor clients -- Bank of America is the anchor client for
10 the U.S. We also have anchor clients that we will be
11 announcing already in place for Canada, for Latin America, for
12 Europe, for Japan that we have in place today that we are
13 working closely with them to take the U.S. regulations that we
14 are building with Bank of America and adjusting those for the
15 other markets around the world. So, which markets that we are
16 focused on, which client we are working on as partners would be
17 information that we would view as very top secret.

18 (Continued next page)

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K7LQibm2

Walker - Direct

1 THE COURT: If I may, I just want to clarify something
2 in my own mind. You're talking about regulatory having
3 acquired commentary, etc. When you say regulatory, I have it
4 in my head that you're going to an agency or place, a public
5 place, and complying with legal requirements. Am I on the
6 right page about that?

7 THE WITNESS: Yes. So, your Honor, think that it is
8 for different industries there is a U.S. government regulator.
9 Every country has a regulator of how they regulate in this case
10 the banks.

11 THE COURT: Yes.

12 THE WITNESS: That regulator will set the rules and
13 the requirements of what you can run: Customer data, other
14 data that you have, let's say, in your four walls on your main
15 frame are -- will allow you if you want to move it to a cloud,
16 if you do that you have to follow these -- you know, this set
17 of rules for us to do that. So that regulator is protecting
18 the consumer to make sure that what is going out into these
19 clouds are not adding undue risk on the consumer. So, that is
20 what we're doing you know with the regulators for financial
21 services for the banks and the insurers.

22 THE COURT: And the process, I assume -- and I'll hear
23 about it, I assume or something about it -- requires the filing
24 of applications or statements of sorts. Yes?

25 THE WITNESS: Yes. It's actually working hand-in-hand

K7LQibm2

Walker - Direct

1 with these regulators. We're not building something and then
2 going to go ask them to approve it. We're actually working
3 very closely with the regulators, you know, if we do this,
4 would they approve -- would they be supportive. So, this is
5 working closely hand-in-hand in order to develop this.

6 THE COURT: And is this -- when you approach these
7 regulators, is this kept confidential or could I with the right
8 person or know-how go and find what you're discussing and
9 dealing with these regulators about?

10 THE WITNESS: In the work that we're doing on this,
11 this would be viewed as confidential, so they would not come
12 and share that with other players in the market, or other banks
13 unless there is approval from Bank of America to share that
14 information, the confidential information to IBM and to Bank of
15 America.

16 THE COURT: And so, for example, if Microsoft wanted
17 to know what you were doing with the regulators, would they be
18 able to on some basis legally, properly, in accordance with the
19 law find out what you were doing with Bank of America?

20 THE WITNESS: No, not to my knowledge. No, sir.

21 THE COURT: OK. Thank you.

22 MR. SIGNORACCI: Thank you. Ashley, next slide,
23 please.

24 Q. Mr. Walker, can you tell us what this represent about FS
25 cloud?

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Walker - Direct

1 A. So, your Honor, as I was explaining, there's a lot of
2 things that come together when you're moving things to a cloud
3 and that you pull together expertise around our cloud,
4 capabilities. You pull expertise around the industry that
5 you're working in, what knowledge you need for that. You also
6 pull in a lot of technical and services expertise to build a
7 solution that is currently taking what's working on site and
8 make it work and work better in a cloud.

9 Also, a piece to that is how you price these
10 solutions. All the competitors price things differently, not
11 only the price per unit but how price them upfront versus over
12 time, how you invest. So, how you price, how you incent
13 clients is a very, very important piece of the bar for all of
14 us in the cloud space.

15 Q. What, if anything, is secret about that, Mr. Walker?

16 A. Everything is. What are our pricing points, what are our
17 investment areas, how do we price, how do we invest, the
18 functional areas for that. So, our pricing and how we go to
19 market is extremely confidential to us.

20 Q. Thank you. And you've described the FS cloud and the
21 pricing. Can you tell me what are your responsibilities with
22 respect to this project at IBM?

23 A. So, I am the owner of this. This is called -- we call it
24 our FS cloud. I am the owner. It's called Project Hamilton,
25 and on behalf of the CEO I own this for IBM as part of my

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Walker - Direct

1 (inaudible).

2 Q. I'm sorry, you're breaking up.

3 A. As part of my owning financial services globally, this
4 financial services cloud, I'm the executive owner for this for
5 IBM.

6 Q. And internally what responsibilities does that entail as
7 the executive owner?

8 A. So, as the executive owner, I work closely with our
9 chairman and CEO and SVPs around strategy, the short term and
10 long term, who do we partner with, who do need to acquire. You
11 know, I work with my colleagues on helping them understand what
12 the solution is, the competitive positioning versus our
13 competitors, their offerings versus our offerings, and then
14 specifically I work with all of the executive owners on the
15 transactions and the deals, understanding deal by deal where we
16 are competitively, how do we price, you know, what is the win
17 strategy for all of our key opportunities globally.

18 Q. Thank you. I would like to return to a few details about
19 the performance team that you mentioned --

20 THE COURT: If I could before this --

21 MR. SIGNORACCI: Yes.

22 THE COURT: Can you tell me, Mr. Walker, do you know
23 what Mr. Lima's role was and involvement was. Much like you're
24 indicating your role, while he had his role, were you involved
25 such that you could testify as to what his role is, was,

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Walker - Direct

1 rather, in this regard that you're talking about Project
2 Hamilton.

3 THE WITNESS: Yes, your Honor. So, in my previous
4 role as financial services, the global managing director, I
5 worked hand-in-hand with Rodrigo in that role. Rodrigo had
6 those key banks in integrated accounts reported in to him. So
7 he and I worked very closely, you know, on the large banks 30
8 plus of those that are integrated accounts on the strategy for
9 each one of those with the team and the opportunities, you
10 know, for each one of those as his (inaudible) his integrated
11 account leader and the strategies for those.

12 I also worked closely with him because he was
13 executive sponsor for two of our key transactions, and so he
14 and I worked very closely on those two specific transactions.

15 Then, finally, as far as the performance team,
16 everything that we share in the performance team strategically,
17 both Rodrigo and I were members of that, so, you know,
18 everything that I know from a performance team standpoint and
19 the information that I have, you know, Rodrigo would have
20 exactly that same information because he would have the same
21 access and would have participated in the same meetings that I
22 have.

23 THE COURT: Just as a point of order, I'm referring to
24 the defendant as Mr. Lima, and I'm looking and saying maybe
25 that is not proper. Am I inappropriately referring to him and

K7LQibm2

Walker - Direct

1 is that why everybody else is calling him Rodrigo? I just want
2 to get it clear and be polite about it.

3 MR. SIGNORACCI: I think either will work, your Honor,
4 Rodrigo or Mr. Lima. I expect that the witnesses who worked
5 with him on a day-to-day basis will likely refer to him as
6 Rodrigo naturally.

7 THE COURT: All right. And I may do that as well.
8 Thank you.

9 BY MR. SIGNORACCI:

10 Q. I would just like to follow up on two of the points that
11 you just made, Mr. Walker. You said Rodrigo was the executive
12 sponsor of two accounts. Can you explain what that means?

13 A. Well, so two -- so two pieces: One, as IBM we have what we
14 call PEXs partnership execs. So, for our most important
15 client, our CEO names a single IBM executive as the partnership
16 exec; that is for her or for his proxy for those accounts to
17 make sure that everything we do in those accounts we speak as
18 one IBM. If there's any issues, if there's any, you know,
19 pricing between different parts of IBM, that partnership exec
20 speaks for our CEO in those accounts. So, Rodrigo was the
21 partnership exec on the account that we talked about.

22 Also, as the partnership exec, he also is the
23 executive sponsor on two specific points of our Hamilton deals,
24 which was Banco Bradesco and Banco Brasil. So, in that role he
25 was responsible with the team on the ground on the strategy,

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Walker - Direct

1 the relationship, the pricing for these opportunities. These
2 opportunities tend to be somewhere between five- and ten-year
3 relationships. They tend to be a hundred billion dollar and
4 above type of deals that are complex and bring everything in.
5 So, we need a senior IBM-er with the maturity that can go in
6 and work on these large, complex pieces that bring all parts of
7 IBMs together in front of our clients. So, Rodrigo was the
8 executive sponsor on a couple of those deals.

9 Q. Thank you. And you mentioned that -- in response to your
10 Honor's question about how Rodrigo knew or was involved in
11 project Hamilton, you mentioned the performance team. Again,
12 and for a matter of public record, can you tell me what is the
13 connection between the financial services cloud and the
14 performance team?

15 A. Yes. So, as I stated earlier, the performance team is the
16 top execs in IBM. We meet at a minimum quarterly typically.

17 Q. Sorry. You broke out. I think you said at a minimum
18 quarterly?

19 A. At a minimum quarterly. We -- that is usually a two-day
20 session, normally face-to-face for two days; and with COVID we
21 have been doing it via video the last two. In that meeting,
22 the purpose of that meeting is to bring all the senior execs
23 around the company to look at the operation of IBM, how we are
24 performing. We typically do it at the end of the quarter, so
25 we have a short view of how did we perform versus our

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Walker - Direct

1 competitors in the market in the previous quarter, and then we
2 spend the rest of the time, you know, focusing on what do we
3 need to change from a strategic standpoint and other areas of
4 focus strategically for the remainder of the year and going
5 forward.

6 First, say, half day typically is a retrospective on
7 what's working and what's not in the market, and then the next
8 day and a half typically is focused on our strategic place. We
9 have as part of that meeting, both last year and as recently as
10 April meeting, we went in in detail around the strategy of what
11 we're doing with our Hamilton which is the financial services
12 and Mystic, which is another name for not only financial
13 services but looking to do a similar thing in other industries.

14 Mystic we gave a full update, you know, of the
15 strategy that we're going forward to the full performance team,
16 and then we drove down into a detailed discussion around
17 opportunities with the exec owners that were in the room of the
18 status of things.

19 Q. Did that include Mr. Lima?

20 A. Yes, it did.

21 Q. How do you know he was there?

22 A. We all participate fully in the performance team. If there
23 is someone for some reason that cannot, that is called out so
24 that we know who is there and who is not, and we would see you
25 face-to-face. The April meeting was on video, so we were all

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Walker - Direct

1 together on the video screen, so I saw him via video.

2 Q. Thank you. How would you generally describe the rank of
3 the executives at IBM or on the performance team?

4 A. Both the rank and the performance is the senior most
5 members of IBM. This is our -- as we would call them in IBM,
6 you have our CEO, who is the top of the company, you have our
7 senior vice-presidents, who are kind of next rank, and then you
8 have the performance team. So, we are the team that is the --
9 typically reports to the SVPs that run the company. We are on
10 the operations and the strategy for these meetings. We are --
11 these meetings you don't -- you're on the performance team
12 because you participate and you perform, so the CEO reserves
13 the right to remove people or add people to that which, you
14 know, we do, you know, happens each year. So we are -- our
15 view is that we are to come prepared. We send the material for
16 these meetings out typically two days in advance. Our meetings
17 are -- we are expected to review all the meeting material and
18 data, and then when we come to the meeting, the meeting is not
19 for presentation only but is expected and required that we have
20 discussions, so all the members are required to be fully
21 prepared and also participate in the discussions of this
22 because this is the team that's running IBM.

23 Q. Thank you. And you said you send the materials out in
24 advance of the meeting. How are the materials shared?

25 A. They are shared in a box, a secure box folder, that we have

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Walker - Direct

1 access to that we would go in. We're told before the meeting
2 when the materials are there, so we typically can go into the
3 secure box folder and get access to it to review. Before when
4 we were doing it face-to-face, the material would be presented
5 in the room but not passed out. With COVID and doing this
6 virtually, we have the material that's in a box and then we
7 look at it on the screen.

8 Q. Thank you.

9 MR. SIGNORACCI: Your Honor, we would like to discuss
10 with Mr. Walker just two documents from the April 2020
11 performance team meeting that he has described. These
12 documents were produced by IBM in discovery and designated as
13 highly confidential IBM information. As Mr. Walker testified,
14 these documents are not widely shared even within the company,
15 and they are kept in a secure box folder that only the
16 performance team members have access to. I don't know if we
17 would have an objection from defendants that --

18 THE COURT: Counsel?

19 MR. DELIKAT: No objection, your Honor, with respect
20 to sealing these two, just to move things along, but we are
21 not, by not objecting, admitting that this information was not
22 otherwise publicly disclosed or otherwise made available.

23 THE COURT: OK. So we will accept the 2 and 3,
24 plaintiffs, when you present them, and they'll be sealed.

25 MR. SIGNORACCI: Thank you, your Honor. They are in

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Walker - Direct

1 your binder as Tab Exhibit 1 -- I'm sorry -- that is now
2 Exhibit 2 is JX-129.

3 THE COURT: We need to clarify something.

4 MR. SIGNORACCI: Yes, your Honor.

5 THE COURT: I took the binder and marked the entire
6 binder as Exhibit 1 now in evidence. In Exhibit 1 are the two
7 separate pieces of paper documents that have labels that you
8 want to seal. So, we've not accomplished for each other what
9 we need to accomplish.

10 So, I think what we will do is we will remove the
11 documents in the binder tab JX-129 and JX-155, those are the
12 two documents you would like me to seal, correct?

13 MR. SIGNORACCI: That's correct, your Honor.

14 THE COURT: And, counsel, those are the two documents
15 which, while you're not conceding anything, you're agreeing
16 that they may be sealed for purposes of this hearing, correct?

17 MR. DELIKAT: Correct, to move the process along. We
18 may have a motion at the end.

19 THE COURT: I got it. I'm not sure what the motion
20 will be, but I'm considering them sealed and in evidence.

21 So, the record should reflect that we're going to
22 remove from what I had previously marked in evidence as
23 Exhibit 1 in the black binder, we are removing therefrom JX-129
24 and JX-155, each of which consist of multiple pages. I'm now
25 going to mark those two Exhibit 2 and 3, sealed and in

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Walker - Direct

1 evidence.

2 (Plaintiff's Exhibits 2 and 3 sealed and received in
3 evidence)

4 MR. SIGNORACCI: Your Honor, we would like Mr. Walker
5 to testify to these documents in detail. In order to do so, we
6 would first request, I believe there are Microsoft participants
7 on the audio conference line, and we would request that they
8 not be permitted to hear that testimony, and that the portions
9 of the transcript that address the documents that are under
10 seal also be placed under seal.

11 MR. DELIKAT: Your Honor, the only Microsoft
12 participants on the conference line is Cindy Randall, who is
13 the head litigation lawyer, in-house counsel, for Microsoft
14 assisting with the defense of this case. There are no
15 Microsoft business people on this phone. I don't think that's
16 necessary under these circumstances.

17 THE COURT: Sir?

18 MR. SIGNORACCI: The protective order refers to
19 outside counsel who are permitted to receive IBM's highly
20 confidential information and not in-house counsel.

21 THE COURT: Let me ask a simpler question. Has the
22 person you referred to filed an appearance in the action?

23 MR. DELIKAT: She has appeared at the depositions in
24 the case. Microsoft is not a party, so it's a third party.
25 She has appeared on the record in depositions.

K7LQibm2

Walker - Direct

1 THE COURT: I get it. I have no way of controlling
2 that person, and while I appreciate the notion that you have a
3 lawyer, I think in fairness, at least for this series of
4 questions, I'm going to exclude the Microsoft lawyer. And I'm
5 taking it on faith that we are having a discussion now about
6 some sort of confidential or trade secret. So, I would ask
7 temporarily one way to solve this problem might be -- and I was
8 going to raise it at some point -- if we had Microsoft sign off
9 on our protective order and agree to be bound by it, for
10 counsel, for this counsel, I don't know that that would solve
11 your problem, but that it would help me understand that I do
12 have control over an individual who is participating here.
13 Would that solve your problem or would you still protest?

14 MR. SIGNORACCI: I think that with the highly
15 confidential IBM information, if it were for a Microsoft
16 in-house litigation attorney solely for the purpose of this
17 litigation --

18 THE COURT: Yes.

19 MR. SIGNORACCI: -- I still think as a non-party,
20 only a producing party, we don't understand why Microsoft would
21 need to see IBM's highly confidential material.

22 THE COURT: I have difficulty with it in several
23 regards. We're bumping up against practically the gravamen,
24 the essence here of what brings us all to the room. Microsoft
25 is not a party. I haven't objected to anybody participating.

K7LQibm2

Walker - Direct

1 I am not clear that it would solve the problem, but it would go
2 a long way.

3 Having said that, since counsel has not signed, I
4 would ask only for the purposes of these two exhibits and the
5 testimony relating thereto that we exclude Microsoft's in-house
6 counsel

7 MR. DELIKAT: We understand, your Honor. We would, of
8 course, be willing to represent -- and I'm sure Ms. Randall
9 would be willing to represent to the Court -- that she would
10 only use this information for purposes of assisting in the
11 defense. I also point out that two of the three depositions we
12 took in this case -- excuse me -- three of the four depositions
13 they took in this case were of Microsoft witnesses, and so it's
14 not like Microsoft is not in this litigation.

15 THE COURT: I appreciate it, and I accept the reality
16 that an officer of the court would do nothing more or less than
17 he or she told me he or she would do. We're doing this right
18 now in live time and so I need to react, so I'm reacting.

19 MR. DELIKAT: Thank you, your Honor.

20 THE COURT: So I will ask Microsoft's counsel to
21 depart for the moment. And, Mr. Signoracci, you assure
22 yourself that that's happened, and then we'll proceed.

23 MR. SIGNORACCI: May I ask the courtroom deputy if we
24 have a way of telling that the person has been bumped out or
25 not?

K7LQibm2

Walker - Direct

1 MR. DELIKAT: One way we could do it, you could close
2 the call and then we reopen it at the appropriate time.

3 THE COURT: Why don't you ask your co-counsel to hang
4 up?

5 MR. DELIKAT: OK.

6 DEPUTY CLERK: Is there only one party on that line?

7 MR. SIGNORACCI: I believe there is one IBM attorney
8 on as well.

9 DEPUTY CLERK: Because I will hang up, but then that
10 cuts everybody off.

11 MR. SIGNORACCI: Do that.

12 THE COURT: Why don't we take a two-minute break and
13 see if we can't figure out how to solve this problem.

14 (Recess)

15 THE COURT: Are we all set now?

16 MR. DELIKAT: Your Honor, are we back on the record?

17 THE COURT: We are back on the record.

18 MR. DELIKAT: Again, just to move things along, while
19 reserving whatever rights we have, we won't object to these
20 documents because we know that will just burn too much time of
21 the two days that we have. So, we just want it on the record
22 so we are not conceding that the documents are trade secrets or
23 highly confidential.

24 THE COURT: I will have to think about that. I
25 appreciate your thought to move things along, but I'm marking

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Walker - Direct

1 them sealed. Whether they constitute trade secrets later on or
2 confidential information, I guess would be broader, I'm ruling
3 on it now, but I'll consider what you have to say.

4 MR. DELIKAT: Thank you.

5 THE COURT: I have an open mind about it. It's not a
6 problem for me.

7 MR. DELIKAT: Thank you.

8 MR. SIGNORACCI: Ashley, could you put JX-129 on the
9 screen.

10 Q. Mr. Walker, this document was submitted to the Court under
11 seal. Can you tell us, do you recognize this document?

12 A. I do.

13 Q. What is it?

14 A. It is the agenda for day one of our performance team
15 meeting. As I said, typically these are two-day meetings back
16 to back. Because of COVID we split it to a video session and
17 we had day one which this is, and then we had a day two later,
18 I think on the 21st. So this is the agenda that we had for
19 that morning session.

20 Q. And the morning was -- can you tell me the date?

21 A. Friday, April 10.

22 Q. And this is the same performance team meeting that you said
23 you saw Mr. Lima on, correct?

24 A. That is correct.

25 Q. The first two speakers are listed as Krishna and Rometty.

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Walker - Direct

1 Can you tell me who they are?

2 A. Yes. So. I think as you are that we had a change of CEO
3 that was effective April 1. So Krishna is Arvind Krishna.
4 He's our new CEO. And Rometty is Ginni Rometty. She was our
5 CEO, and now she's our executive chairman. So, as this being
6 Arvind's first performance team, he opened up the session. We
7 were -- typically these meetings are after earnings, so when we
8 have the meetings after earnings, we are not in blackout, so we
9 can talk numbers and, you know, the detail of the previous
10 quarter's performance. This meeting, given the date of April
11 10, was held while we were still in blackout. So we did not go
12 into the normal level of detail around the numbers in
13 retrospective.

14 So, Arvind kicked off the meeting. He was five days
15 into the role, so just a retrospective to his first five days.
16 Then he really gave his expectations to us around as a
17 performance team, his expectations of us around being engaged,
18 participating and being the stewards of the IBM Corporation
19 both on a short-term and a long-term perspective, and how he
20 had planned to run these meetings going forward which would be
21 more on the strategy and less on the detailed operational
22 aspects of the meeting.

23 Ginni gave her observations in her executive chairman
24 role. She spent a lot of time with chief executives of many of
25 our clients and our key partners, and she gave some macro view

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Walker - Direct

1 of COVID and what we were seeing in the market around COVID and
2 what she was hearing from her co-CEOs and chairman around how
3 they were planning to respond not only short term but, you
4 know, evolve over time to the new normal post-COVID. So that
5 was Arvind and Ginni's opening.

6 MR. SIGNORACCI: Thank you. Ashley, if you could flip
7 to the next page.

8 Q. After Foster, the next two names are Guido and Walker. Can
9 you tell me about those presentations?

10 A. Yes. So, for this section, we had a number of sessions
11 where execs talked about our key strategic plays. We had
12 Michelle Peluso and John Granger talk about our key offerings.
13 We had others talk about how we were going to change in COVID
14 and go digital.

15 Then we had Mark Foster talking about as a -- a
16 setting that determined the importance of our large deals for
17 our long-term success. And then he had Phil Guido, who leads
18 the Mystic program for us, and myself, who leads the Hamilton
19 program for us, to lead a discussion session on Mystic and
20 Hamilton.

21 Q. Can you tell me -- so you said there that Phil leads the
22 Mystic project, and you lead the Hamilton project. Can you
23 tell me a little more about Mystic independent of Hamilton?

24 A. Yes. So, Mystic is -- was based on a large deal that we
25 did last year with AT&T. This is called -- the deal was called

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Walker - Direct

1 Yosemite. It's a large multibillion dollar partnership
2 agreement that we signed with AT&T in competition with
3 Microsoft. And in that pursuit and partnership, we saw a new
4 way of what clients were looking for around how they do these
5 large, long-term relationships with cloud.

6 So, that Yosemite deal was taking their current
7 applications that are running on their mainframes and on
8 premise and moving those applications to cloud, to IBM's cloud,
9 to other clouds in the transformation, and we took the
10 ownership off that for the client.

11 In that competition, we needed to do a new way of
12 working, which is investing, because when you move something
13 from an on-premise computer to a cloud, you can -- it costs a
14 lot of money to do that transformation. What we've come up
15 with is a different way of working which we can use a balance
16 sheet, we can use IBM's financials to finance the upfront move
17 so that the client doesn't have to do a large payment upfront,
18 which, especially now with COVID and things, clients don't
19 usually have the money to make a large payment upfront, but we
20 have a model that we connect a finance for that and invest that
21 with a long-term commitment. So that model that we developed
22 at AT&T is the model now that we are replicating with other
23 clients around the world.

24 Anthem was the example that Guido felt was a simpler
25 deal for Anthem and the healthcare industry and he laid out

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Walker - Direct

1 exactly how he took what was learned from AT&T and did that for
2 Anthem. He then went through the other -- the next ten large
3 opportunities that we used across the industries where we
4 thought this type of deal would be appropriate. So, it was
5 focusing on what are we seeing, how does this compare to
6 competition, what are the opportunities, and what is the
7 pipeline over the next couple of years on these large
8 transformational deals. For myself -- sorry, so there were a
9 lot of things.

10 Q. Go ahead.

11 A. OK. On Hamilton, Hamilton is a subset of Mystic where we
12 are -- on Mystic, we are moving it just to IBM's public cloud.
13 It's our standard public cloud. What we're doing for Hamilton
14 is, as I spoke, we have a financial services public cloud which
15 is unique for financial services that we can move financial
16 work loads there. So, a subset of the Mystic deal or the
17 Hamilton deals, which are these large, complex transformational
18 deals that we're doing with the financial institution, banks,
19 and insurers around the world where we are leveraging and
20 utilizing our financial services cloud as the destination, but
21 we're using the same modeling of investing and business
22 outcomes and other things that we're going into make from a
23 client's standpoint giving them a business outcome that they're
24 looking for and it makes sense to move these work loads from
25 where they are at to a cloud that is financially viable.

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Walker - Direct

1 Q. And when you refer to work loads, what are you referring
2 to?

3 A. The work loads as we were saying earlier, the 80 percent of
4 the information that had moved to cloud, those are customer
5 information. They are financial information. They are
6 application data that looks at all the orders. You know, for a
7 bank, it's all the chart of accounts. It's all of the
8 information that goes into that. So it's all of the detail
9 core information that you run a bank with or a network with or
10 private information for a healthcare provider around patient
11 information. So, all of the secure confidential information
12 that normally you would never put on a public cloud, that's the
13 piece that we look at and help them determine a way to move
14 that to our financial services cloud in a safe, secure, and
15 encrypted way.

16 Q. Thank you. Looking on the left-hand side, how long was
17 your presentation to the performance team?

18 A. I think it was approximately -- if I can count,
19 approximately 30 minutes.

20 Q. Thank you.

21 MR. SIGNORACCI: Ashley, if you could put JX-155 on
22 the screen. And if you can flip to the 12th page. Your Honor,
23 this document was produced in discovery, and that process
24 changed the formatting and the image. So there is a cleaner
25 image of the same document that begins at page 12.

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Walker - Direct

1 THE COURT: Counsel, are you OK with that?

2 MR. DELIKAT: Yes, your Honor.

3 THE COURT: OK. Then I'm OK with it.

4 MR. SIGNORACCI: Great. Thank you.

5 Q. Mr. Walker, do you recognize this document?

6 A. Yes. This is the presentation that was put into the box
7 folder two days before and that Mr. Guido and I used during our
8 leading the discussion of the performance team.

9 Q. Can you read the marking at the bottom of the document?

10 A. Sorry, the way it --

11 THE COURT: The IBM confidential part?

12 MR. SIGNORACCI: Yes, your Honor.

13 THE COURT: I saw that.

14 Q. You see that it is labeled at the bottom "IBM
15 confidential"?

16 A. I do.

17 THE COURT: At least the first two pages.

18 MR. SIGNORACCI: Ashley, if you could put page 2.

19 Q. Mr. Walker, can you tell us what this slide represents that
20 you presented at the April 20 performance meeting?

21 A. Well, this is what we developed with Arvind as the CEO, our
22 new way of going after large transformational deals with our
23 largest clients, and we break the way we pursue these deals
24 into three different initiatives: Mystic A, which is what I
25 just described that Mr. Guido leads. It pulls together our

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Walker - Direct

1 applications, our infrastructure, our cloud, Red Hat, and we
2 work with clients, our largest clients on, you know, large
3 multiyear transformational deals kind of a minimum size of
4 200 million but typically a billion plus in opportunity. AT&T
5 was the example where we developed that. Anthem that we talked
6 about in this meeting was one of those that we did in first
7 quarter. So, that's that model.

8 Then, as I said, Mystic B is the Hamilton deals. It's
9 a subset of those Mystic deals which are focused on financial
10 services, focused on the regulatory compliance, the security
11 and the leveraging of our financial services cloud as the base,
12 you know, of that work. We have a larger number of those
13 because those can be billion dollar plus deals, but they can
14 also go down to smaller, you know, 50 million and above. So
15 Mystic A, a smaller number, ten plus deals. Mystic B, we tend
16 to have 20 or 30 of those around the world.

17 And then the bottom piece cloud value transformation,
18 which is if a client doesn't want to move to a cloud -- to our
19 cloud, they just want to do the application and modernization
20 work, then we can help them move it to our cloud or anyone
21 else's cloud from a services only standpoint.

22 And we talked about the IT. We have dedicated teams
23 that do this. We have dedicated intellectual property that's
24 unique of how we do it, technical specs., the pricing. So we
25 explain that to all of the IBM executive team so that they are

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Walker - Direct

1 aware of our new transformational play.

2 Q. What would you consider about this slide to be
3 confidential?

4 A. Pretty much everything. How we maintain the market into
5 the different pieces, our model on how we are going after large
6 Mystic deals, pulling together our application of
7 modernization, our services, our cloud, our Red Hat, the list
8 of opportunities how we're focusing on it. Hamilton, you know,
9 very similar around the destination, the financial services
10 cloud, and cloud value transformation, so it's around the
11 discussion how do we segment the clients, how do we select the
12 clients, and then the discussion was on competitively how does
13 that compare to our competitors and the offerings that they
14 have in each of these three areas.

15 MR. SIGNORACCI: Ashley, if you could turn to the next
16 page, page 14.

17 Q. Can you tell us about these two charts in the middle,
18 Mr. Walker?

19 A. So, on Mystic we get into the detail and we got into -- we
20 wanted to explain in detail to all of the performance team
21 members what was the business driver on the left, what are we
22 seeing from our clients, especially now in this time with COVID
23 what is changing because of COVID and the post COVID world is
24 changing, and so what their business drivers were.

25 Then we went into detail around how work unique, we

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Walker - Direct

1 were pulling in what we have with Red Hat, pulling in our
2 capabilities both that we have from an application in services
3 and a security standpoint from software, and how we pull all of
4 that in together into this unique model and the way we engage
5 with clients, the value that we can provide to our clients
6 going forward. And that's on the right, so it's the outcomes.
7 We wanted to make sure that all of our executive teams and
8 especially the executive owners in the room knew what the new
9 solution and offering was and could be able to articulate and
10 leave that with our clients going forward.

11 THE COURT: Is there some reason that this piece of
12 paper, this sheet is not marked IBM confidential?

13 MR. SIGNORACCI: Your Honor, do you mean originally or
14 in the discovery?

15 THE COURT: I'm just looking at page 14 and 22, as you
16 have my attention, and I don't see it marked confidential. I'm
17 just curious, was it marked confidential originally and then it
18 didn't show up or --

19 MR. SIGNORACCI: I believe the produced version is
20 marked on every page as IBM highly confidential. This is for
21 the convenience of reviewing the slides in color and in clarity
22 version, but we can brand for submission.

23 THE COURT: There isn't anything else about these
24 slides that's different, correct?

25 MR. SIGNORACCI: Correct. Correct.

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Walker - Direct

1 THE COURT: Do you agree with that, counsel?

2 MR. DELIKAT: I think it's a little bit unclear
3 whether or not Paul Weiss placed the label of highly
4 confidential when they produced it in discovery or your
5 question which was, was the document originally stamped
6 confidential when it was distributed. I don't think I heard an
7 answer to that.

8 THE COURT: I think that is a fair point. I have
9 inferred to this moment that your client marked this
10 confidential. Am I right about that?

11 MR. SIGNORACCI: That's correct. The cover page and
12 the second page have the original IBM confidential branding,
13 and then in production they received an additional
14 confidentiality branding of IBM highly confidential.

15 THE COURT: So when you made these color slides,
16 somehow the IBM confidential label did not reappear.

17 MR. SIGNORACCI: That's correct.

18 THE COURT: And there isn't, to your knowledge,
19 anything else that did not reappear.

20 MR. SIGNORACCI: Your Honor, on the first slide even
21 in the reproduced version, the original IBM confidential does
22 appear.

23 THE COURT: OK, got it.

24 MR. DELIKAT: Your Honor, can my colleague,
25 Mr. Thompson, comment about that, because I still think there's

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Walker - Direct

1 confusion about --

2 THE COURT: Well, wait. Wait. Hold on. Let's keep a
3 nice clean record so that we are not making it difficult for
4 those later.

5 My question was with respect to page 14 of what I have
6 now marked Exhibit 3, page 14 and 22, I noticed that at the
7 bottom there was no IBM confidential, and heretofore I took the
8 IBM confidential on the preceding two pages to mean that back
9 at the ranch when they were having this meeting, that whoever
10 prepared this marked it IBM confidential. And so the question
11 I asked was, was there any reason why on this particular page
12 there was not a marking.

13 I heard two things: One, that when I made these
14 colors so that the judge would be able to look at a color and
15 nice presentation, it didn't reappear. I asked counsel if
16 there was an objection to that. And he said no, that's fine.
17 And so I took it as no more or no less than that. But I also
18 heard that separately Paul Weiss in its production marked these
19 documents confidential. Am I right so far?

20 MR. SIGNORACCI: You're right so far.

21 THE COURT: OK. So now, counsel, if there is
22 something you want to address in that context, I'm happy to
23 hear you.

24 MR. THOMPSON: Yes, your Honor. So I think what
25 counsel is talking about, we're talking about the original

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Walker - Direct

1 confidentiality designations by IBM, talking about that for a
2 moment. There is a designation on the first page, and I
3 believe the second page, and as your Honor points out, there's
4 not a designation on the page we're looking at today. And I
5 think counsel cannot deny that IBM did not put a designation on
6 that page.

7 THE COURT: That's not what he said to me.

8 MR. THOMPSON: Well, I think if you asked him that, he
9 would have to confirm.

10 THE COURT: I thought I asked you that.

11 MR. SIGNORACCI: You did, your Honor.

12 THE COURT: And you said yes on the original there was
13 IBM confidential.

14 MR. SIGNORACCI: On the first and second pages.

15 THE COURT: So the difficulty we're having, of course,
16 is only in relation to the reproduction that is in front of me.
17 I was not -- excuse me. I was not looking to open a can of
18 worms. I was looking to understand that perhaps what appeared
19 to be more confidential than the cover sheet did not in fact
20 say it was confidential, and I was just trying to understand
21 why that was. As far as I can tell, you've cleared it up for
22 me.

23 MR. SIGNORACCI: No. In that case, your Honor, I
24 think I do need to clear it up for you. This document as it
25 exists at the ranch is a single PowerPoint that has the IBM

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Walker - Direct

1 confidential branding on the cover page and on the second page.

2 THE COURT: But not on any other.

3 MR. SIGNORACCI: Correct.

4 THE COURT: Thank you. Then I misunderstood, and your
5 objection is well stated so that we're clear, redundantly
6 clear, that Exhibit 3 in evidence has been marked by IBM as
7 "IBM confidential" on the pages marked 12 of 22 and 13 of 22,
8 but not 14 of 22, dare I say, and thereafter? No, I can't. So
9 only page 14 of 22 is not marked. OK.

10 All right. Let's proceed.

11 MR. SIGNORACCI: Thank you, your Honor.

12 THE COURT: We have a clear record now.

13 (Continued on next page)
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Walker - Direct

1 BY MR. SIGNORACCI: (Continuing)

2 Q. Ashley, could you turn to page 20, please?

3 THE COURT: I mean, just for the sake of it, as long
4 as we have digressed, page 15 through 22 all says confidential.

5 MR. SIGNORACCI: And those are original brands.

6 BY MR. SIGNORACCI:

7 Q. Mr. Walker, I am just turning to this slide for the top
8 title and then we will look at the next slide. Do you see the
9 title here? Can you read that for us?

10 A. Yes. This is our Mystic B/Hamilton key pursuits, accounts
11 we were pursuing as a party.

12 Q. Ashley, can you turn to the next page.

13 Now, this title says?

14 A. It is the continuation, so these are our Mystic B/Hamilton
15 key pursuits that we are pursuing.

16 Q. Can you tell me what you mean by key pursuits?

17 A. These are opportunities that we have identified and spaces
18 where it is green on the right-hand side already have teams
19 engaged and working as of the date here, as of April the 10th
20 of the opportunities that we are working on with Mystic and
21 Hamilton opportunities. So, the client that you have here
22 would be the client, would be the executive sponsor, member of
23 the PT, and then would you have a team who is the owner for the
24 on the ground full-time pursuit owner and then on the right
25 pursuit underway would mean we have already qualified this with

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Walker - Direct

1 the client and we have teams engaged and working. Where it is
2 in white it would be that we are working with the client but we
3 have not yet got executive support and we don't have a pursuit
4 underway as of April the 10th.

5 THE COURT: Just so I am clear, these are clients who
6 are paying customers of IBM, currently the ones in green; am I
7 correct?

8 THE WITNESS: Your Honor, all of these clients would
9 be existing customers of IBM in some format. The ones that are
10 on here are ones that we have identified and we were already
11 working on at that time on a opportunity in the Hamilton space.
12 For the ones that are in white, your Honor, are ones that we
13 talked to but we had not yet gotten their approval and support
14 to go forward on a pursuit at that time.

15 THE COURT: The ones in green have engaged IBM to work
16 on Hamilton or Mystic issues; is that right?

17 THE WITNESS: That is correct, sir.

18 THE COURT: Okay. Thank you.

19 Q. Mr. Walker, those existing engagements with clients, are
20 those public?

21 A. Can you clarify the question?

22 THE COURT: Yes. I was going to say that myself.

23 Q. The status of IBM -- the status and the specifics of IBM's
24 outreach to those clients on Mystic or Hamilton.

25 A. So there is several things, just for clarification on this,

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Walker - Direct

1 that is very confidential. So, the clients that we have on the
2 left, that mixture of clients includes our integrated accounts
3 and it is not public which accounts that we treat as integrated
4 accounts and which ones we do not so the clients, just for
5 clarity on the left, includes a set of clients that are
6 integrated accounts, but it also includes a set of clients that
7 are not integrated accounts that could be just an industry
8 client. The Hamilton offering, not just for our largest
9 integrated accounts but it really cuts across all the banks and
10 insurance companies worldwide. So, that would be one. Two,
11 the status that we are pursuing and are engaged with these
12 clients would be highly confidential and if our competitors
13 knew that they could come in and put competing offers, they
14 could sell against us in doing that so we treat this very
15 confidential of which clients we are working with at any date
16 in time.

17 Q. Ashley, if you can zoom in on the bottom three rows of the
18 document?

19 Mr. Walker, do you see those?

20 A. I do.

21 Q. Reading from the left to the right, can you tell us what
22 these rows mean?

23 A. Yes. So, the three clients that we had in April, on April
24 10th that we were looking at, engagement with Hamilton
25 opportunities the first is Banco Bradesco, that is one that we

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Walker - Direct

1 had Rodrigo as the PT executive sponsor and Katia is the
2 on-the-ground managing director that is running the deal, and
3 green would mean that we have got agreement from the client and
4 we have a team lender engaged on a Hamilton pursuit.

5 On Banco de Brasil it would say that Rodrigo is the
6 sponsor, Teresa is the executive full-time on the ground, and
7 as of April the 10th there was -- did not have approval that
8 the client was underway.

9 Q. I think you said there was not approval underway with the
10 client?

11 A. There was not an approved pursuit underway with the client.

12 Q. And what were Rodrigo's responsibilities in connection with
13 being the PT executive sponsor for these two pursuits?

14 A. So, as the PT executive sponsor this was the person that
15 spoke for all of IBM, this -- from Arvind our CEO and his
16 responsive ability and delegation to ensure that we were
17 pulling all of IBM together in these complex deals making sure
18 that all the parts of the organization were working closely
19 with the same strategy and competitive strategy, would be
20 engaging with the senior execs of the client personally on
21 this, and would be approving pricing and valuation and would
22 have final sign-off on that.

23 Q. And you said these were the pursuits in Latin America on
24 the left-hand side. Is that what the "LA" stands for?

25 A. That is correct. These would be the pursuits that were

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Walker - Direct

1 with clients headquartered in Latin America. They are also
2 clients, global clients that have operations in Latin America
3 that would be headquartered somewhere else but would have a
4 significant footprint in Latin America. These were the ones
5 that were headquartered in Latin America.

6 Q. Why was Rodrigo selected as the sponsor for these two Latin
7 America clients?

8 A. As partnership executive, the relationship with the senior
9 clients with the understanding of the market, the ongoing --
10 the capability, he comes from a services background and his
11 understanding of the financial services cloud, his ability to
12 clearly articulate that and the value to the client.

13 Q. Did Mr. Lima have any other responsibilities in connection
14 with Latin America?

15 A. In his role as the integrated account exec he was
16 responsible for all 77 of our globally integrated accounts.
17 Those we had -- we had two of those that were based in Latin
18 America, one was Bradesco that we talk about here, and the
19 other was Itau, which is another large bank in Brazil. Those
20 are the two integrated accounts that report to Rodrigo that
21 were Brazil-based. He also had, for all of the integrated
22 accounts that had Latin footprint, he would be responsible for
23 those so Santander, BBVA, AT&T has a large Mexican presence,
24 you would have Wal-Mart with a large Latin American presence,
25 you would have General Motors with a large Latin presence, you

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Walker - Direct

1 would have Citi with a large Mexican presence. So, in his role
2 these are run as global accounts as globally integrated
3 accounts. They would have a headquarter location but in his
4 role he would be responsible for all of the global operations
5 of these accounts.

6 Q. And we heard from Microsoft today that they propose to wall
7 Rodrigo off from those client accounts. If they did that,
8 would that resolve your concerns in this case?

9 A. No, on several fronts.

10 So, one, all of our -- we set -- a large number of the
11 integrated accounts that he was responsible for have
12 significant Latin America footprint so all of those, the
13 knowledge that he has and strategy for that set of accounts for
14 those that he had responsibility would be an issue but probably
15 more importantly Rodrigo, like myself, we have in our head, we
16 know IBM strategy, we know our competitive strategies, we know
17 our financials. As a performance team member we have access to
18 information that cuts across all geographies of our business,
19 all parts of our business and his knowledge that he has would
20 cut across not only the two integrated accounts but would cut
21 across all of our enterprise clients across Latin America that
22 we have because the strategy we do is we work on our largest
23 accounts as kind of setting the strategy but then we look to
24 replicate that with our smaller accounts. So, the knowledge of
25 our strategies ongoing this year and next year around hybrid

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Walker - Direct

1 cloud, around AI, around how we are changing our coverage model
2 and those assets is something that would be very concerning.

3 Q. Thank you.

4 And the very last line that's expanded here, the third
5 Latin America account, who is the PT executive sponsor of that?

6 A. Ana Paula Assis. Ana Paula is our general manager for
7 Latin America so she is in the role similar to the role, as I
8 understand it, that Rodrigo would be performing his.

9 Q. Thank you.

10 MR. SIGNORACCI: Your Honor, may I have one moment?

11 THE COURT: Of course.

12 MR. SIGNORACCI: Your Honor, at this time we have no
13 further questions.

14 THE COURT: I have one just before cross.

15 This meeting that took place, I just want to be clear
16 and I want the record clear, is this the only meeting that you
17 are aware of that Mr. Lima attended since his promotion? Is
18 there another meeting? In other words, this is an April
19 meeting; was there one in January or before this?

20 THE WITNESS: Yes. Good question, your Honor.

21 So, we have -- so, there is several meetings so the
22 performance team meeting is held quarterly.

23 THE COURT: Right.

24 THE WITNESS: So we had one in January and then this
25 was the follow-up. The January one was done face-to-face over

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Walker - Direct

1 two days. This one, because of COVID, was held and was done
2 virtually over two days. We had our acceleration team meeting
3 which set strategy for the year and going forward, that was
4 also held in January that set the strategy. We had in that
5 meeting one of the keynote speakers was Howard Boville. Howard
6 was the senior vice president for Bank of America, so Howard
7 spoke around our financial services cloud and the importance of
8 the shift that we were doing, and then we also had the Leonard
9 who is the COO for -- it is BP Paribas, a large bank in France.
10 Leonard spoke, they are also a financial services cloud
11 strategic partner for us for Europe and he was also on stage
12 speaking about our financial services cloud and the work that
13 we were doing and the importance for them going forward.

14 So, that was a key strategic session that we had.

15 THE COURT: I appreciate all of that. My concern,
16 question really was was there another performance team meeting
17 in January that you saw Mr. Lima at, yes, you did; or, no, you
18 didn't.

19 THE WITNESS: Yes, I did. Face to face.

20 THE COURT: Simple. Thank you. All right.

21 Cross?

22 MR. McQUADE: Yes, your Honor. Given the witness
23 can't see me, would it be acceptable if I stayed in my seat and
24 conducted the examination here?

25 THE COURT: As long as are you comfortable there.

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Walker - Cross

1 THE WITNESS: I can't see you.

2 MR. McQUADE: Should I go there?

3 THE COURT: Whatever is comfortable. If you want to
4 stay seated you don't need to stand on my account.

5 MR. McQUADE: Thank you, your Honor. I will stay
6 here. Thank you very much, I appreciate that.

7 THE COURT: Sure.

8 CROSS EXAMINATION

9 BY MR. McQUADE:

10 Q. Mr. Walker, I think I will follow up on the Judge's last
11 question to you about the January 2020 performance team
12 meeting.

13 THE COURT: I'm not seeing the witness and I would
14 like to see him as he is being cross-examined, if that's
15 feasible.

16 THE DEPUTY CLERK: He was up there.

17 MR. SIGNORACCI: Randy, can you try toggling your
18 video on?

19 THE WITNESS: Sure.

20 THE COURT: Yes. Now I see you fine, Mr. Walker.
21 Thank you.

22 BY MR. McQUADE:

23 Q. So, Mr. Walker, I wanted to ask you a follow up on the
24 Judge's question about the January 2020 performance team
25 meeting. You testified that you recalled seeing Mr. Lima at

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Walker - Cross

1 that meeting in person?

2 A. That is correct.

3 Q. Do you recall testifying at your deposition that you could
4 not recall the topics presented at that January 2020 quarterly
5 performance team meeting?

6 A. That's correct.

7 Q. That's correct, you could not remember any of the topics?

8 A. No, I could remember -- I could not remember every topic
9 and every item that was discussed in that meeting.

10 Q. Do you also recall at your deposition you testified that
11 you could not recall all of the individuals who were present at
12 the January 2020 quarterly performance team meeting? Isn't
13 that right?

14 A. My understanding is that everyone at -- the performance
15 team members were all there. Anyone who would not be in the
16 meeting would have been called out as not participating and a
17 reason given for why they would not be participating. It's a
18 full participation meeting so anyone who was not there, their
19 absence is called out.

20 THE COURT: Before you proceed, Mr. Walker, I want you
21 to do your best to simply answer the question that you are
22 being asked.

23 THE WITNESS: Yes, sir.

24 THE COURT: We are not having a conversation, we are
25 giving testimony under oath and the lawyer is entitled to get a

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Walker - Cross

1 direct answer to his question to the best of your ability. And
2 if, for any reason, IBM's counsel needs to clean up or clarify
3 or get my attention on something, rest assured you have
4 entirely competent counsel and I assume they would do that
5 forthwith and once cross-examination is over. So, just try and
6 answer the question and we will move it along. Okay?

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you, Mr. Walker.

9 MR. McQUADE: Thank you, your Honor.

10 BY MR. McQUADE:

11 Q. So, Mr. Walker, I will ask you a yes or no question. At
12 your deposition you testified that you could not recall all of
13 the individuals who presented at the January 2020 quarterly
14 performance team meeting, correct?

15 A. Yes.

16 Q. You said the performance meeting was a quarterly meeting so
17 can you tell me when was the previous performance team meeting
18 before the January 2020 meeting?

19 A. October of '19.

20 Q. And at your deposition you testified that you could not
21 recall who spoke at that October 2019 performance team meeting,
22 correct?

23 A. Yes.

24 Q. And at your deposition you also testified that you could
25 not recall the details of what was discussed at that October

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Walker - Cross

1 2019 performance team meeting, correct?

2 A. Yes.

3 Q. Okay. So, if we move forward in time to the April 2020
4 performance team meeting, do you recall that the total running
5 time of the first day of the performance team meeting was two
6 hours and 45 minutes?

7 A. By the agenda it looks like the -- yes.

8 Q. And you were looking at Joint Exhibit 129 when you were
9 answering that question?

10 A. The agenda for the April 10th meeting was what I was
11 looking at; yes, correct.

12 THE COURT: Please mark that as Exhibit 2 in evidence,
13 just so the record is clear.

14 (Plaintiff's Exhibit 2 received in evidence)

15 BY MR. McQUADE:

16 Q. And so the record is clear, that document is designated in
17 the lower left-hand corner has been designated by IBM as highly
18 confidential IBM information. Do you see that?

19 A. I don't see it.

20 Q. Okay. In Joint Exhibit 129, if you look in the lower
21 right-hand corner there is a Bates number, IBM Lima 0025094.
22 We are going to put it up for you.

23 Can you see that, Mr. Walker? Is it up on your screen
24 now?

25 A. Yes, it is.

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Walker - Cross

1 Q. So I was referring to the lower left-hand corner of this
2 document, it's been designated by IBM as highly confidential
3 IBM information. Do you see that?

4 A. Yes.

5 Q. Can you take a look at this document and tell me what text
6 in this document would be characterized, in your view, as
7 highly sensitive proprietary business information?

8 MR. SIGNORACCI: Objection, your Honor.

9 THE COURT: I think, counsel, I see where you are
10 headed. I think you have mixed in a little bit of legal
11 conclusion with your fact questions so if you want to ask him
12 about what he believes to be confidential or proprietary,
13 that's fine. If you want to ask him about the highly
14 confidential IBM information designation, that's also fine.
15 Just pull it apart for me.

16 MR. McQUADE: Sure. Happy to, your Honor.

17 BY MR. McQUADE:

18 Q. Do you believe any of the information contained in this
19 document is confidential information?

20 A. The focus on Mystic and Hamilton is a very confidential.

21 Q. Can you tell me what page and what section of the document
22 you are looking at, please?

23 THE COURT: I thought we were looking at the first
24 page first. Is there anything on this page, Mr. Walker, that
25 you understand to be confidential as counsel has asked you, on

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Walker - Cross

1 just this one page?

2 THE WITNESS: Content of the discussions, yes. What's
3 written in the words on this page, no.

4 THE COURT: Okay.

5 BY MR. McQUADE:

6 Q. Same question for page 2, we will blow it up for you, make
7 it larger?

8 A. Mystic, Hamilton, and Anthem as a key example of large
9 complex services deals would be confidential.

10 Q. What's confidential about that? Are those names, are those
11 words confidential?

12 A. They are code names for the programs that --

13 THE COURT: Mr. Walker, for the programs that? You
14 said they were code names for the programs that and the court
15 reporter didn't get the rest.

16 THE WITNESS: Those are code names for our
17 confidential programs that we were running.

18 BY MR. McQUADE:

19 Q. Okay. Are those code names confidential?

20 A. Our programs are confidential. The Anthem example, as a
21 client, is confidential.

22 Q. The question was are the code names confidential?

23 A. Yes; that we have a Mystic program that's running and a
24 Hamilton program that is running, that is confidential.

25 Q. Is there anything competitively sensitive about the name

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Walker - Cross

1 Mystic or Hamilton, the name Mystic/Hamilton update?

2 A. No.

3 Q. Is there anything else on this page before we turn to the
4 next page, that's confidential?

5 A. No.

6 Q. Can we turn to the next page? Is there anything on this
7 page that you believe is confidential?

8 A. I can't see the page.

9 Q. Okay. We will enlarge that for you. Are you able to see
10 that?

11 A. I am trying to. I think the piece that would be
12 confidential is the meeting, and that we decided to hold the
13 meeting not in person but via video would be confidential.

14 Q. And do you think that's competitively sensitive information
15 as well?

16 A. It could be.

17 Q. And can you explain that, how it could be, please?

18 THE COURT: You have to start over, Mr. Walker. I
19 don't know what's going on but you are blipping in and out so
20 if you wouldn't mind starting your answer over so that the
21 reporter can get this?

22 THE WITNESS: Thank you. I will speak up.

23 I would view that when the senior executive team, when
24 and where they are meeting as a group would be confidential
25 information to IBM.

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Walker - Cross

1 BY MR. McQUADE:

2 Q. Do you think it's competitively sensitive that a company is
3 holding a virtual meeting during COVID-19?

4 A. I think where the senior-most execs, when, where, and how
5 often they are meeting as a team is competitively sensitive.

6 Q. Okay. The final page of this document is a reprint of the
7 first page, I believe; is that correct? We can turn one more
8 page.

9 THE COURT: I have two more pages, counsel, 4 of 5 and
10 5 of 5.

11 MR. McQUADE: 4 of 5 is a blank document and 5 of 5 is
12 a second performance team meeting agenda --

13 THE COURT: I got it.

14 MR. McQUADE: -- which I believe, and correct me if I
15 am wrong, this is a repeat of what was on page 1 and partially
16 on page 2.

17 THE WITNESS: Is that me?

18 THE COURT: That's for you, yes, Mr. Walker.

19 THE WITNESS: Yes. I think it is, looks to be the
20 same agenda, correct.

21 BY MR. McQUADE:

22 Q. Okay. Mr. Walker, if I can turn your attention to joint
23 Exhibit 155?

24 THE COURT: 3 in evidence, counsel.

25 (Plaintiff's Exhibit 3 received in evidence)

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Walker - Cross

1 BY MR. McQUADE:

2 Q. You testified earlier that this is the PowerPoint that you
3 used as part of your presentation with Mr. Guido; is that
4 correct?

5 A. Correct.

6 Q. And you testified that your presentation lasted 30 minutes
7 according to the agenda; is that correct?

8 A. Approximately.

9 Q. And I think we established through some discussion of this
10 document that the document is a total of 11 pages in total,
11 correct?

12 A. I take that as correct. I am not sure of the number of
13 pages but that would seem correct.

14 Q. So, in your presentation with Mr. Guido is it fair to say
15 that you two spent approximately three minutes per page? Is
16 that a fair characterization?

17 A. No. We sent this out in advance. The team were expected
18 to read the material and so some of the slides we discussed,
19 others we only made mention so it would not be a --

20 Q. I'm sorry, I didn't hear your answer.

21 Mr. Walker, part of the problem was it was just a yes
22 or no question. If you could, please, just try to answer the
23 question as the Judge suggested yes or no, if you can.

24 THE WITNESS: Can you repeat the question?

25 MR. McQUADE: Can I ask the court reporter to read it

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Walker - Cross

1 back?

2 THE COURT: Please read it back.

3 MR. McQUADE: Thank you.

4 (Record read)

5 THE WITNESS: No.

6 MR. McQUADE: Thank you.

7 If I could turn your attention to, in this Joint
8 Exhibit 155, if we could turn to page 21 of 22.

9 THE COURT: I don't want to be redundant or interrupt
10 but we are going to call it Plaintiff's Exhibit 3 for the
11 record so that every time counsel refers to Joint Exhibit 155 I
12 take it to mean Exhibit 3.

13 Okay, continue.

14 BY MR. McQUADE:

15 Q. Mr. Walker, your attention was drawn to the final three
16 lines of this chart and you identified two, I think you
17 described it as partnership executive program accounts that
18 Mr. Lima was responsible for; is that correct?

19 A. It is the PT executive sponsor for those two.

20 Q. And are those both integrated accounts as well?

21 A. No. Bradesco is an integrated account, Banco de Brasil is
22 not.

23 Q. Mr. Walker, as you sit here today, are you aware or do you
24 have any first-hand knowledge of any meeting that Mr. Lima had
25 with Bradesco during the last 12 months of his employment with

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Walker - Cross

1 IBM?

2 A. No.

3 Q. And as you sit here today, do you have any first-hand
4 knowledge of any meeting that Mr. Lima had with IBM clients
5 during the final 12 months of his employment with IBM?

6 A. No.

7 Q. And you are the finance sector leader; is that correct?

8 A. Financial services sector leader, correct.

9 Q. And both of these clients would fall under your area of
10 responsibility in that position; is that correct?

11 A. Which?

12 THE COURT: We are not understanding -- Mr. Walker,
13 are you having trouble understanding the question?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Okay.

16 Could you reframe your question, please, sir, so that
17 the witness can answer?

18 MR. McQUADE: Sure.

19 BY MR. McQUADE:

20 Q. Mr. Walker, you currently hold the position general
21 manager, financial services sector; correct?

22 A. Global managing director, financial services sector.

23 Q. And part of your responsibilities relates to clients in the
24 financial services sector, correct?

25 A. Correct; the integrated accounts in the financial services

K7L5ibm3

Walker - Cross

1 sector.

2 Q. Is Banco de Brasil an integrated account in the financial
3 services sector?

4 A. No.

5 Q. Is Banco Bradesco a client in the financial services
6 sector?

7 A. It is an integrated account, yes.

8 Q. So do you have responsibility for that account?

9 A. I do.

10 Q. Mr. Walker, changing directions a bit here, you also
11 testified about an acceleration team and you mentioned, I
12 believe, that that team meets annually; is that correct?

13 A. Correct.

14 Q. And so the last acceleration team meeting was in January of
15 2020; is that right?

16 A. Correct.

17 Q. And do you recall at your deposition you testified that
18 with respect to that 2020 annual acceleration team meeting you
19 could not recall all of the details of the meeting; isn't that
20 right?

21 A. Correct.

22 Q. As you sit here today you also don't know what, if
23 anything, Mr. Lima remembers from any acceleration team
24 meeting; isn't that right?

25 A. Yes.

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Walker - Cross

1 Q. And as you sit here today you don't have any idea of what,
2 if anything, Mr. Lima remembers from any performance team
3 meeting; isn't that right?

4 A. Yes.

5 Q. And as you sit here today, you have no idea what IBM
6 confidential information Mr. Lima remembers from his employment
7 at IBM, do you?

8 A. Yes.

9 Q. And what's the basis for that knowledge of what you believe
10 Mr. Lima has?

11 A. Mr. Lima was the same teams that I was in. I know what
12 information that I was privy to so I understand the information
13 that Mr. Lima was privy to.

14 Q. But you don't have any first-hand knowledge of that
15 information, do you? You are basing that on your experience;
16 is that correct?

17 MR. SIGNORACCI: Objection.

18 THE WITNESS: Correct.

19 THE COURT: Overruled.

20 BY MR. McQUADE:

21 Q. So you talked earlier today, you testified earlier today
22 about AT&T; is that right?

23 A. Yes.

24 Q. And you said Mr. Lima worked closely with you with respect
25 to that client; is that correct?

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Walker - Cross

1 A. Yes.

2 Q. And is it true you worked as the managing director for AT&T
3 from approximately 2018 to the end of 2019?

4 A. Yes.

5 Q. And you were responsible for the entire relationship and
6 partnership between AT&T and IBM during that time period; isn't
7 that right?

8 A. Yes.

9 Q. So, as managing director of financial services for IBM you
10 did not directly report to Mr. Lima, did you?

11 A. No.

12 Q. And as managing director of financial services you were
13 responsible for the engagement of accounts in the financial
14 services sector; is that right?

15 A. Yes.

16 Q. And that included integrated accounts, correct?

17 A. Yes.

18 Q. And isn't it true that it is the IBM -- I will start again.

19 Isn't it true that it is the IBM account plans that
20 show overall how IBM is doing with a particular account?

21 A. No.

22 Q. Do you recall testifying at your deposition that the IBM
23 account plans show overall how IBM is doing on an account?

24 A. No.

25 Q. Let me ask you this. IBM account plans show --

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Walker - Cross

1 THE COURT: Are you saying IBM account plans?

2 MR. McQUADE: Yes.

3 THE COURT: I'm sorry to interrupt you.

4 BY MR. McQUADE:

5 Q. Let me ask this way. IBM account plans show IBM's overall
6 strategy for a particular account; isn't that correct?

7 A. Yes.

8 Q. And IBM account plans show the competitive situation with
9 respect to a particular account; isn't that right?

10 A. Yes.

11 Q. And IBM account plans show long-term and short-term plans
12 for a particular account; right?

13 A. Yes.

14 Q. They also show the key members from the IBM team for that
15 particular account, right?

16 A. No.

17 Q. Do IBM account plans show the key client members that are
18 working for that particular account?

19 A. The -- yes.

20 Q. And isn't it true that Mr. Lima did not create the account
21 plans?

22 A. Correct.

23 Q. And as you sit here today you don't know whether Mr. Lima
24 actually reviewed account plans for all 77 integrated accounts
25 during his employment at IBM, do you?

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Walker - Cross

1 A. No.

2 Q. Is it true that there has been changes with the IBM
3 integrated accounts since the COVID-19 pandemic has struck?

4 A. Yes. Two accounts have been added.

5 Q. Do you recall testifying at your deposition that there were
6 changes in the nature of the integrated accounts, for example
7 there were changes in the accounts' profits and revenues since
8 the COVID-19 pandemic has struck?

9 A. No.

10 Q. You don't recall testifying to that?

11 A. No.

12 Q. Do you recall testifying that there have been changes with
13 IBM integrated accounts with respect to pricing and strategy
14 since the COVID-19 pandemic struck?

15 A. No.

16 Q. Do you recall testifying that there have been changes with
17 IBM integrated accounts with respect to strengths and
18 weaknesses since the COVID-19 pandemic struck?

19 A. Yes.

20 Q. And do you recall testifying that there have been changes
21 with IBM integrated accounts with respect to key opportunities
22 since the COVID-19 pandemic struck?

23 A. Yes.

24 Q. You testified this morning about Red Hat. Do you recall
25 that testimony?

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Walker - Cross

1 A. Yes.

2 Q. Isn't it true that Microsoft works as a partner with
3 Red Hat on projects?

4 A. Yes.

5 Q. In fact, people at IBM refer to Red Hat as Switzerland,
6 doesn't it? Or don't they?

7 A. Yes.

8 Q. And IBM refers to Red Hat as Switzerland because it is
9 neutral and works with many technology companies outside of IBM
10 including Microsoft, correct?

11 A. Yes.

12 Q. As a partner with Red Hat Microsoft will have the same
13 knowledge as all other partners of Red Hat; isn't that right?

14 A. No.

15 Q. Let me ask you this. Isn't it true that Microsoft is well
16 aware of Red Hat's offerings and its open source materials?

17 A. Yes.

18 Q. Mr. Walker, you testified this morning about cloud. Do you
19 recall that testimony?

20 A. Yes.

21 Q. Mr. Lima was never a part of a cloud computing organization
22 at IBM from an organizational standpoint; isn't that right?

23 A. Not to my awareness.

24 Q. And you testified at your deposition that IBM is ranked
25 fourth through tenth in the various cloud categories. Do you

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Walker - Cross

1 recall that testimony?

2 A. No.

3 Q. Isn't it true that Microsoft is the historical leader in
4 public cloud in the Latin American market and keeps gaining
5 market share?

6 A. Not to my awareness.

7 Q. Okay. You do you recall testifying at your deposition that
8 Microsoft is the historical leader in public cloud in the Latin
9 American market and keeps gaining market share?

10 A. No.

11 Q. Do you recall seeing a document that was prepared by IBM
12 that laid that out?

13 A. No.

14 Q. I would like to mark and pull up Joint Exhibit 97?

15 THE COURT: We are going to adopt the Court's
16 terminology so this will be now Defendant's Exhibit A for
17 identification.

18 MR. SIGNORACCI: Your Honor, this document was
19 produced by IBM in discovery and marked as highly confidential
20 IBM information. We, of course, have no objection to the
21 introduction of the document as evidence but we ask that it be
22 placed under seal.

23 THE COURT: Counsel?

24 MR. DELIKAT: No objection. And, counsel for
25 Microsoft has not been able to join because the line is closed

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Walker - Cross

1 so she is not on anymore.

2 THE COURT: Okay. So we will mark whatever this piece
3 of paper is that's coming Defendant's Exhibit A. Does it have
4 Bates, counsel, so the record will reflect at least, because I
5 don't have it in front of me, at least what it is that is A now
6 under seal?

7 MR. McQUADE: It does, your Honor. The first of the
8 Bates Number are covered by what's on the screen. It is IBM
9 Lima 0100760-83. That number is partially obscured by the
10 Exhibit 8 Defendant Randy Walker. It was an exhibit to
11 Mr. Walker's deposition.

12 THE COURT: Okay.

13 MR. McQUADE: So that deposition Exhibit 8 sticker is
14 blocking the Bates Number.

15 THE COURT: How many pages is it?

16 MR. McQUADE: It is a 24-page document.

17 THE COURT: Okay. Is there a copy for me?

18 MR. SIGNORACCI: Your Honor, one other point I would
19 like to raise --

20 THE COURT: Wait. I would like to look at the
21 document while you are cross-examining the witness. If you
22 don't -- supply me one?

23 MR. SIGNORACCI: Your Honor, one reason that we might
24 not have the copies on hand is that under the protective order
25 Mr. Lima's counsel was obligated to inform IBM before Mr. Lima

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Walker - Cross

1 questioned any IBM witnesses about documents that were marked
2 highly confidential and IBM information and did not do so.

3 THE COURT: It is part of the order, I did see that.
4 So, I appreciate the comment but you did agree to notify each
5 other about highly confidential documents that would be used.
6 Let's be practical. Lawyers write down a lot of things and
7 they intend totally, when they sign their names to them and ask
8 the Judge to so order, to fully comply and I am sure that's no
9 different than here. Let's put that aside for the moment, we
10 can cure that at lunch. You are cross-examining, I want to
11 understand your point, and I am hopeful that having a copy of
12 it will enhance the point so that's why am interrupting you and
13 not trying to get in the way but rather I just want to see
14 what's going on, if that's okay.

15 Frank, do you want to get a copy for me? Thank you.

16 MR. SIGNORACCI: And I am not sure whether the witness
17 has access to the full copy on his screen.

18 THE COURT: We will work with the cross as it is but
19 this is now A, in evidence, under seal, at least for the
20 moment.

21 (Defendant's Exhibit A received in evidence)

22 THE COURT: Sorry to interrupt. I just want to follow
23 along. That's all.

24 BY MR. McQUADE:

25 Q. Mr. Walker, this is a document that was put in front of you

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Walker - Cross

1 and marked as an exhibit at your deposition.

2 Do you recall this document?

3 A. Yes.

4 Q. And what is this document?

5 I'm sorry. Can you tell us what this document is,
6 please?

7 THE COURT: Mr. Walker, we are not hearing. If you
8 could repeat? I thought you said you had not seen it or you
9 had.

10 THE WITNESS: I have not seen this document until it
11 was shown to me in the deposition.

12 THE COURT: Okay.

13 BY MR. McQUADE:

14 Q. Okay. Do you remember at your deposition that your
15 attention was pointed to the upper left-hand corner of page 7
16 where it says public cloud, Microsoft is the leader in Latin
17 America and keeps gaining market share.

18 Do you see that?

19 A. Yes.

20 Q. Do you recall being asked: Is that consistent with your
21 understanding of the competitive landscape in Latin America?

22 Do you recall that?

23 A. No.

24 Q. Why don't we pull up Mr. Walker's deposition testimony?

25 THE COURT: Before we do, counsel, who prepared this

K7L5ibm3

Walker - Cross

1 document, Mr. Walker, if you know?

2 THE WITNESS: I'm not aware of this document. First I
3 saw it was when they showed it to me so it looks like it was an
4 internal IBM document that -- for Latin America but I have
5 never seen it before it was shown to me.

6 THE COURT: Okay.

7 BY MR. McQUADE:

8 Q. So, Mr. Walker, we are going to pull up a portion of your
9 videotape deposition testimony, the transcript is page 242,
10 line 10 through page 243, line 6.

11 THE COURT: Are you confronting him with it or are you
12 asking him for his recollection? What?

13 MR. McQUADE: I am presenting it to him to refresh his
14 recollection.

15 THE COURT: Okay.

16 So, they're going to read you your testimony or ask
17 you to look a at it and ask you if you recall testifying as
18 indicated in the deposition transcript. The answer to that
19 will be yes, I do, or no, I don't.

20 Okay?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay.

23 (Videotape deposition played)

24 BY MR. McQUADE:

25 Q. Okay, Mr. Walker, does that refresh your recollection

K7L5ibm3

Walker - Cross

1 relating to your testimony?

2 A. Yes.

3 Q. Mr. Walker, I would like to draw your attention to
4 Plaintiff's Exhibit 1 which was the PowerPoint slide created by
5 counsel to IBM and presented on your direct examination. If
6 you could turn to page -- or we will turn the screen for you to
7 page 6 of that document. Now, this slide has information about
8 Microsoft, correct?

9 A. Correct.

10 Q. And how do you know this information about Microsoft that's
11 found on page 6?

12 A. We -- from two ways. Our IBM services team, our global
13 business services team works with Microsoft to do migrations
14 into Azure in a multi-cloud environment and also have
15 competitive positioning from our internal competitive teams
16 that share that information with us.

17 Q. And that information that your competitive teams gathers,
18 they gather publicly available information; isn't that correct?

19 A. Correct.

20 Q. And all the information on this page is publicly available;
21 isn't that right?

22 A. I'm not sure.

23 Q. And don't you think Microsoft would know the same type of
24 information that appears on this slide about IBM?

25 A. Not sure.

K7L5ibm3

Walker - Cross

1 Q. Okay. You testified at your deposition that in or about
2 February of 2020 Mr. Lima informed you that he was unhappy at
3 IBM.

4 Do you recall that testimony?

5 A. Yes.

6 (Continued on next page)

K7LQibm4

Walker - Cross

1 BY MR. McQUADE: (Continued)

2 Q. And you also testified that Mr. Lima in that same
3 conversation in February 2020 informed you that he was
4 considering taking a leave of absence because he was unhappy at
5 IBM. Do you recall that?

6 A. Yes.

7 Q. You also had a conversation with Mr. Lima after he gave his
8 resignation to IBM, didn't you?

9 A. Yes.

10 Q. And in that conversation, Mr. Lima told you he was
11 resigning from IBM because he was unhappy with the company.
12 Isn't that correct?

13 A. Yes.

14 Q. And during that same conversation, he also told you he was
15 unhappy with where IBM was going. Isn't that right?

16 A. I don't recall.

17 Q. In that conversation, that same conversation, Mr. Lima told
18 you he was planning to join Microsoft. Isn't that correct?

19 A. That is correct.

20 Q. And in that same conversation, Mr. Lima told you about the
21 position he was intending to take with Microsoft, didn't he?

22 A. Yes.

23 Q. And during that same conversation, didn't you tell Mr. Lima
24 that you have a daughter that works at Microsoft?

25 A. Yes.

K7LQibm4

Walker - Cross

1 Q. In that conversation, after hearing that Mr. Lima was going
2 to Microsoft and what his position would be at Microsoft, you
3 didn't express any concerns with Mr. Lima about his employment
4 with Microsoft, did you?

5 A. I don't recall.

6 Q. Is it your understanding that in Mr. Lima's position at
7 Microsoft, he will be responsible for Microsoft's business in
8 Latin America?

9 A. That is my understanding.

10 Q. And is it also your understanding that the position
11 Mr. Lima has accepted with Microsoft is similar in scope and
12 responsibilities to the role he had with IBM as general manager
13 Latin America. Isn't that right?

14 A. It would be similar in scope of what Ana Paula Assis, who
15 is our current VP for Latin America would be.

16 Q. And Mr. Lima held that position, general manager Latin
17 America, up until 2017. Isn't that right?

18 A. Correct, but the roles have changed over the past few
19 years, sir.

20 Q. Yes. And it's been approximately three years since
21 Mr. Lima held that role as general manager Latin America for
22 IBM. Isn't that correct?

23 A. I would say of the three -- yes. Yes.

24 Q. Mr. Walker, you signed a declaration in support of IBM's
25 motion for temporary restraining order and preliminary

K7LQibm4

Walker - Cross

1 injunction in this case. Isn't that right?

2 A. Yes.

3 Q. And at the time you signed that declaration in this case,
4 were you aware that both Microsoft and Mr. Lima had agreed that
5 Mr. Lima would have no involvement with integrated account
6 clients or his partnership executive program clients at
7 Microsoft for the 12 months following his resignation from IBM?

8 A. No.

9 Q. You testified earlier today that you are serving in an
10 interim role as general manager of integrated accounts. Is
11 that correct?

12 A. Correct.

13 Q. And the role general manager of integrated accounts is the
14 position that Mr. Lima had when he resigned from IBM. Isn't
15 that right?

16 A. Correct.

17 Q. Isn't it true that in May of this year you recommended that
18 there be no replacement for Mr. Lima's role?

19 A. My -- yes.

20 MR. McQUADE: I would like to mark what we have
21 identified as our Joint Exhibit 355 and 356, which we would
22 mark as Defendant's B and Defendant's C.

23 MR. SIGNORACCI: Your Honor, we have no objection to
24 the admission into evidence, so long as it's under seal, as
25 it's been designated IBM highly confidential information.

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Walker - Cross

1 THE COURT: Counsel.

2 MR. DELIKAT: No objection.

3 THE COURT: I'm struggling a little bit with these
4 consent designations only because I'm trying to move things
5 along for both of you. In fact, it may be a subject we raise
6 with each other later. I have before me Lima 0100934. What is
7 that going to be marked?

8 MR. McQUADE: Could we mark that Defendant's Exhibit
9 B, please, your Honor.

10 THE COURT: B in evidence, yes, sealed, at least for
11 the moment.

12 MR. SIGNORACCI: Thank you, your Honor.

13 THE COURT: Let me say a word to both of you about
14 this sealing business. You fully understand the difference
15 between the public's right to know in a public forum, the
16 courtroom is open and available to the public, and your need to
17 protect your own client's secrets and confidences. I am here
18 to do that, but let's not gild the lily with what is
19 confidences and secrets. And let's both, please, limit it to
20 what legitimately, because I'm going to look at it just like
21 you look at it, and I'm going to see what you see. So, let's
22 not clutter the record with sealed documents that really don't
23 belong being sealed, OK?

24 MR. DELIKAT: Your Honor, that would have been my
25 comment, that there is nothing in this document that meets that

K7LQibm4

Walker - Cross

1 standard, but we are trying to move it along.

2 THE COURT: Let's move it along. I don't want to make
3 for brief writing or letter writing later. If there is
4 confidential material here, I'm going to keep it confidential
5 and sealed. If there isn't, I'm not, period. OK? Sorry to
6 interrupt.

7 Exhibit B. How much time do you think you'll need to
8 complete B and C and whatever additional cross. I'm just
9 worried about the reporter and lunch hour. I would just like
10 to get a little plan. I don't want to interrupt your flow.

11 MR. McQUADE: Approximately ten minutes.

12 THE COURT: Ten minutes will be perfect. I'll assume
13 it's 15, and that will get us to 1:10.

14 MR. McQUADE: Thank you.

15 THE COURT: Thank you.

16 (Defendant's Exhibit B sealed and received in
17 evidence)

18 BY MR. McQUADE:

19 Q. Mr. Walker, we placed in front of you a document that's
20 been marked Defendant's Exhibit B. If you look up at the top
21 of the page, and we can highlight the "from," it looks like
22 this is an email that you sent to a K. Landis and a group of
23 other individuals at IBM addresses who were cc'd on this email,
24 and this email was sent on May 20, 2020. Do you see that?

25 A. Yes.

K7LQibm4

Walker - Cross

1 Q. And do you recognize this email?

2 A. Yes.

3 Q. This is an email you sent, correct?

4 A. Yes.

5 Q. OK. If you look down into the text of the email, the first
6 line, we can highlight that line for you. It says, "I know all
7 of you have seen Rodrigo's departure. He is a good friend and
8 we wish he and his family well as they return to Brazil."

9 Do you see that?

10 A. Yes.

11 Q. And then down to the next paragraph it says, "In my
12 discussion with BvK, I have told her that I/we (sorry for
13 speaking for you all) feel strongly that a replacement for
14 Rodrigo's role is not needed."

15 Do you see that?

16 A. Yes.

17 Q. And who is BvK?

18 A. Bridget van Kralingen.

19 Q. Is it true on May 20, 2020 it was your recommendation that
20 there be no replacement for Rodrigo's role as GM of integrated
21 accounts?

22 A. Yes.

23 Q. If I could turn your attention to Defendant's Exhibit C.
24 If we could blow up the top line there that shows that this is
25 an email that you sent to an ARomine@USIBM.com on May 21?

K7LQibm4

Walker - Cross

1 THE COURT: Do you have one for me, counsel?

2 MR. SIGNORACCI: Your Honor, we also ask that this
3 document be placed under seal as it's been labeled IBM highly
4 confidential information, and it concerns confidential
5 information about IBM's business in conversations with very
6 senior executives that are not public.

7 THE COURT: I agree to B and C under seal. They will
8 be sealed for the moment. I'm happy to look at it now and seal
9 it as confidential.

10 (Defendant's Exhibit C sealed and received in
11 evidence)

12 Q. Mr. Walker, do you see the date of this email is May 21,
13 2020. Do you see that?

14 A. Yes.

15 Q. And who is the person you're sending this email to?

16 A. Amy Romine. She is at this time Bridget van Kralingen's
17 H.R. leader.

18 Q. And the email is also sent to BvK@IBM.com?

19 A. Yes.

20 Q. Can you tell us who that is?

21 A. Bridget van Kralingen.

22 Q. If we can move down into the body of the email, the third
23 or I guess it's the fourth paragraph, the largest paragraph
24 that starts "IA team," if I could focus you on just that first
25 sentence. It says "IA team - we will not replace Rodrigo's

K7LQibm4

Walker - Cross

1 role." do you see that?

2 A. Yes.

3 Q. So, as of May 21, 2020, was it true that there would be no
4 replacement for Rodrigo in his role as GM of integrated
5 accounts?

6 A. At that time, yes.

7 Q. And as of that date, May 20, 2020, how long had Rodrigo
8 Lima, Mr. Lima, been in the role of GM integrated accounts?

9 A. Since the beginning of the year.

10 Q. January?

11 A. Correct.

12 Q. OK. So, January until his resignation in May of 2020. Is
13 that correct?

14 A. Yes.

15 Q. Do you know the actual date of his resignation?

16 A. I don't recall.

17 Q. Well, it would have been before May 20, 2020, correct?

18 A. Yes.

19 Q. And did there come a time when IBM sent all of its U.S.
20 employees to work from home remotely due to COVID-19?

21 A. I -- yes.

22 Q. And when was that?

23 A. I don't recall.

24 Q. First week in March sound about right?

25 A. That I don't recall.

K7LQibm4

Walker - Cross

1 Q. OK. Mr. Walker, I asked you a series of questions at your
2 deposition about your views and beliefs on Mr. Lima. I'm going
3 to ask you that same series of questions today to close out
4 your testimony.

5 The first question is this: Mr. Lima was viewed as a
6 well-thought-of executive at IBM. Isn't that right?

7 A. Yes.

8 Q. And you considered Mr. Lima a friend of yours. Isn't that
9 right?

10 A. A colleague and friend.

11 Q. You believe Mr. Lima to be trustworthy, correct?

12 A. Yes.

13 Q. You believe Mr. Lima to be honest, correct?

14 A. Yes.

15 Q. You believe or you think that Mr. Lima is an honorable
16 person. Isn't that right?

17 A. Yes.

18 MR. McQUADE: Thank you, Mr. Walker.

19 I have nothing further at this time, your Honor.

20 MR. SIGNORACCI: Your Honor, I think redirect will
21 just be a very few minutes.

22 THE COURT: If it's a very few, we will otherwise --

23 MR. SIGNORACCI: Very few.

24 THE COURT: -- stop after very few.

25 MR. SIGNORACCI: Absolutely. Could you pull up

K7LQibm4

Walker - Redirect

1 Plaintiff's Exhibit JX-129 and turn to page 5.

2 REDIRECT EXAMINATION

3 BY MR. SIGNORACCI:

4 Q. Mr. Walker, at the top right hand of this page, do you see
5 the marker IBM confidential?

6 A. Yes.

7 Q. Who receives the performance team agenda?

8 A. The performance team members.

9 Q. Does everyone at IBM receive this?

10 A. No.

11 Q. Does anyone outside of IBM receive this?

12 A. No.

13 MR. SIGNORACCI: Ashley, do you have a copy of
14 Defendant's Exhibit C that was just raised? And scrolling in
15 on the same sentence that defense counsel asked you about, "IA
16 team -- we will not replace Rodrigo's role."

17 What is the next sentence?

18 A. "I will take a Primus role and leverage the other Sector
19 GMs to take on different aspects in an agile shared distributed
20 fashion."

21 Q. So under that plan, what was happening with Rodrigo's role?

22 A. Rodrigo's role had multiple facets. It had an H.R. facet.
23 It had a strategy facet. It had an operational facet. Instead
24 of having -- at the time since I was having multiple hats, we
25 decided to split the role among several other SGM's to take on

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Walker - Recross

1 different important aspects of that role.

2 MR. SIGNORACCI: That's all, your Honor.

3 THE COURT: That's what it says.

4 MR. SIGNORACCI: That's all I have.

5 THE COURT: Thank you. It's 1:05.

6 MR. McQUADE: Your Honor, just one question.

7 THE COURT: I'm sorry. Recross.

8 MR. McQUADE: I think I can limit it just to a couple
9 of questions.

10 RE CROSS EXAMINATION

11 BY MR. McQUADE:

12 Q. Mr. Walker, if I could turn your attention to Plaintiff's
13 Exhibit 2. This is the agenda. If I could turn your attention
14 to -- if we go to page 5, the page that your counsel had just
15 referred you to, if you could focus your attention on the
16 bottom of that. The 9:05 to 9:35 a.m. slot Mystic/Hamilton
17 update, it refers to the Anthem example and next 10. Do you
18 see that?

19 A. Yes.

20 Q. And Anthem, that refers to a deal that IBM had with Anthem.
21 Isn't that correct?

22 A. Yes, it's referred to as Anthem/Mystic that was signed in
23 Q1.

24 Q. And that Anthem/Mystic deal that was signed in Q1 was a
25 publicly disclosed deal. Isn't that right?

1 A. Yes.

2 MR. McQUADE: I have nothing further, your Honor.

3 MR. SIGNORACCI: Nothing further.

4 THE COURT: OK. Mr. Walker, I would get off the phone
5 quickly so the lawyers don't think of something else to say to
6 you. Thank you for your testimony and thank you for patiently
7 restating so that we have a perfect record here of what
8 transpired.

9 THE WITNESS: Thank you, your Honor.

10 THE COURT: OK. 1:05. I would say as quickly as time
11 permits, we will give the reporter a chance to have some rest
12 and a few minutes for lunch. How about 2:00, does that work?

13 MR. McQUADE: That's fine, your Honor.

14 THE COURT: 2:00. All right. We will be back at
15 2:00, and we stand in recess until then.

16 (Luncheon recess)

17
18
19 K7LQibm4

20 AFTERNOON SESSION

21 2:00 p.m.

22 THE COURT: I see we have somebody in the proverbial
23 witness box besides my law clerk. OK. Let's proceed.

24 MS. VELAZQUEZ: Your Honor, IBM calls Juan Zufiria.

25 JUAN ANTONIO ZUFIRIA,

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Zufiria - Direct

1 called as a witness by the Plaintiff,

2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 MS. VELAZQUEZ: May I proceed?

5 THE COURT: Yes.

6 BY MS. VELAZQUEZ:

7 Q. Mr. Zufiria, good afternoon. Where are you located today,
8 sir?

9 A. Today I am located in a city called San Sebastian at the
10 north of Spain in the Basque country.

11 Q. And by whom are you currently employed?

12 A. I am employed by IBM.

13 Q. How long have you worked for IBM?

14 A. I have worked for IBM 34 years.

15 Q. And what is your current position at IBM?

16 A. Senior vice-president of global technology services.

17 Q. And is it OK if we refer to global technology services as
18 GTS?

19 A. Yes.

20 Q. How long have you held your current position?

21 A. I took this position on February 1 of 2019.

22 Q. Juan, could you repeat that last line?

23 A. Yes. It's at least seven months and a half, more or less.

24 Q. Who do you report to?

25 A. I report at this moment to Mr. Mark Foster, which is the

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Zufiria - Direct

1 IBM services senior vice-president.

2 Q. And what are your responsibilities?

3 A. My responsibilities to run Esso global technology services
4 for IBM globally.

5 Q. How long have you worked in the GTS?

6 A. During my career, I work in GTS several times. In totality
7 in the range of 15 years.

8 Q. And what other positions have you held at IBM?

9 A. Prior to this position, I was general manager of IBM for
10 Euro. So I ran all their business for IBM Euro. Before that,
11 I was global technology services for Euro. And before that I
12 was general manager of a region in the south of Europe.

13 Q. Did you have any jobs before you joined IBM?

14 A. No, IBM was my first job when I graduated from university.

15 Q. And tell us about your education starting with university.

16 A. I completed my aeronautical space engineer. I have a Ph.D.
17 in aeronautical space engineering from Polytech University of
18 Madrid. After that, I got my Ph.D. in applied mathematics from
19 the California Institute of Technology. And I also hold --

20 Q. Juan, could you repeat that last degree?

21 A. Yes, Master of Business Administration for international
22 business. That was a master that I took in the London School
23 of Economics and in an IBM program.

24 Q. Have you received any professional recognition or honors?

25 A. Well, several. Probably the most relevant I am a Numerary

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Zufiria - Direct

1 Member of the Royal Academy of Spain which represents the most
2 relevant and distinct engineers alive at this moment in the
3 country.

4 Q. Mr. Zufiria, the Court has heard a bit about GTS this
5 morning, but in your own words can you tell us what does GTS
6 do?

7 A. Well, GTS is about designing, building, and managing IT
8 infrastructures for our clients. So, we go to a client and let
9 me help you optimize your infrastructure environment. I'm
10 going to take over the environment, and we optimize with
11 maximum economies of a scale, and that will make it more
12 efficient.

13 THE COURT: Yes. I'm trying not to interrupt, but,
14 Mr. Zufiria, I would ask you to slow down a little bit and
15 maybe speak a little louder. The court reporter is trying her
16 best to get every word you are saying, and I guess because we
17 are so far apart that the transmission is a little difficult at
18 moments. So, if you wouldn't mind, slow it down just a hair so
19 she can hear you loud and clear and maybe raise your voice a
20 little bit. OK?

21 THE WITNESS: I am really sorry, and I will do my best
22 on this.

23 THE COURT: It's not your fault at all. It has
24 nothing to do with that. We're just talking hundreds and
25 thousands of miles away, and I want to make sure my record,

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Zufiria - Direct

1 which is the most important thing to me, is very clear about
2 what you are telling us.

3 THE WITNESS: OK.

4 THE COURT: OK.

5 MS. VELAZQUEZ: I can ask the question again.

6 Q. Mr. Zufiria, what does GTS do?

7 A. What GTS does. GTS designs, builds, and manages
8 infrastructure IT infrastructures for a client. Basically, we
9 help them to optimize their IT infrastructures, the
10 complications, the machines, the software to run it in a more
11 efficient way, and in most of the cases we run the
12 infrastructures for them. That's why we have been called
13 outsourcing. We outsourcing -- the client outsources the
14 infrastructure to IBM.

15 Q. Does GTS provide services to IBM clients that involve the
16 IBM public cloud?

17 A. Yes. We manage the infrastructure of our clients.
18 Traditionally, clients have traditional infrastructures. They
19 have private clouds in their data centers, and they consume
20 public (inaudible). We run the full end-to-end embankment. So
21 public cloud is one of the legs of the things that we do for
22 our clients.

23 Q. Does GTS also provide services that involve private and
24 hybrid cloud environments?

25 A. Yes, traditional private and public cloud environments.

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Zufiria - Direct

1 Q. Is the IBM public cloud important for GTS's business?

2 A. It is very important. It's part of the total value
3 proposition of our business model and plays a very important
4 role in the balancing of our financials, our numbers of
5 profitability.

6 Q. Can you explain?

7 A. Sorry. Could you repeat the question?

8 Q. Can you explain?

9 A. I -- so I said, it is very important for our financials
10 because it's the source -- it is one of the most important
11 sources of our profitability.

12 Q. And what are enterprise customers?

13 A. IBM and GTS we work in what we call business-to-business
14 space. We serve enterprise clients. We are not in the
15 consumer space. We don't serve individually consumers. We
16 serve our clients which have operations, enterprises that they
17 have their own clients and consumers.

18 Q. And what, if anything, makes IBM public cloud attractive
19 for enterprise clients?

20 A. Public clouds when referring to enterprise clients requires
21 a specific security, a specific compliance into regulations and
22 that's where we are strong, and we make big investments so that
23 we ensure that our public cloud gives the confidence of
24 regulatory requirements for our clients so that they can feel
25 safe putting their work flows and their applications in our

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Zufiria - Direct

1 public cloud.

2 Q. Now, I'm not looking for precise numbers, but can you tell
3 us approximately what IBM's market position is in private
4 clouds?

5 A. I think at this moment while those numbers probably measure
6 and publish it, we believe that we are leading the private
7 platform space, and a market share in private cloud would be in
8 the range of 20 to 30 percent, but I understand this is
9 difficult to measure.

10 Q. How about hybrid cloud, can you tell us what approximately
11 IBM's market position is in hybrid cloud?

12 A. In hybrid cloud after our position of Red Hat, we have the
13 confidence that we are leading in that space, and providing the
14 exact numbers is difficult, but it would be in the same range
15 of numbers that we mentioned before.

16 Q. Can you tell us what approximately IBM's position is in the
17 public cloud market?

18 A. In the enterprise public cloud position, I think we are
19 leaders when we consider the total public cloud market, when
20 you include videos, pictures, consumer pictures, etc., our
21 public share is lower.

22 Q. Does Microsoft has its own public cloud?

23 A. Microsoft has started some investments in the public cloud.
24 Now they are aggressively moving into the private cloud space
25 to try to get the enterprise workloads. The enterprise

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Zufiria - Direct

1 workloads are the ones that still have not been moved into
2 cloud environment.

3 Q. Does Microsoft have its own services business to move
4 clients to Microsoft's cloud?

5 A. No. Microsoft doesn't have a services movement. When you
6 are in cloud, when you need to perform and move them into the
7 public cloud, you need it's like moving to a new house from
8 your current house, and you need to have a moving company that
9 does the movement of your furniture to the new house. So
10 Microsoft partners with other services companies to make that
11 movement.

12 In the particular case of GTS, we perform the totality
13 of the work. We have the new house, and we also have the
14 moving company, so we perform the movement, and we built the
15 new house, and we run the new house.

16 Q. And by "the house," are you referring to IBM's public
17 cloud?

18 A. Yes. When I -- yes, IBM public cloud. Yes.

19 MS. VELAZQUEZ: Your Honor, I would like to submit
20 Plaintiff's Exhibit 4, which is part of our witness binder.

21 THE COURT: Any objection?

22 MS. VELAZQUEZ: It's a demonstrative. It's a one-page
23 demonstrative:

24 THE COURT: I don't want to screw up this binder like
25 I did the prior one. This is a binder with a number of

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Zufiria - Direct

1 exhibits.

2 MS. VELAZQUEZ: Yes, your Honor. We won't use them
3 all, but we will go one by one.

4 THE COURT: So the first one --

5 MS. VELAZQUEZ: Is a demonstrative.

6 THE COURT: -- is what's labeled demonstrative, and
7 we're marking that as Plaintiff's 4 for identification until I
8 hear from counsel.

9 MR. DELIKAT: No objection as a demonstrative exhibit
10 taken for that value.

11 THE COURT: It is what it is, right? So then we'll
12 admit number 4, a demonstrative exhibit consisting of two pages
13 at the beginning of this second black binder. OK, proceed.

14 (Plaintiff's Exhibit 4 received in evidence)

15 Q. Mr. Zufiria, are you able to see the slide that is up on
16 the page on the screen?

17 A. Yes.

18 Q. Can you explain this slide to us, how are GTS's competitors
19 leveraging ecosystems to address the same growth opportunities?

20 A. Yes. As I said before, we are involved in the movement and
21 also building the new house. Our competitors they try to
22 partner. They are very clear public cloud providers. You can
23 see here in the chart how much Google and also Microsoft logo,
24 and they partnered with other companies like Accenture to
25 perform the movement. So they built the house, but they need

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Zufiria - Direct

1 the moving company. So normally we compete with a union of a
2 public cloud player and a services company in GTS.

3 Q. Can you give a recent example of GTS competing against
4 Microsoft for cloud business from enterprise clients?

5 A. Yes. Last year we competed in many cases. One very
6 well-known is AT&T and Microsoft is one piece of the business.
7 A piece of the business went public --

8 Q. I'm sorry, Juan. You broke up. Could you tell us again?

9 A. Yes. Last year AT&T competed and then part of the
10 workloads went to Microsoft and part of the workloads went into
11 IBM public cloud.

12 Q. Was Mr. Lima involved in that deal?

13 A. Yes.

14 Q. How?

15 A. Well, it was under his responsibility. It was probably the
16 most important transaction of last year, and it was part of his
17 business so he was engaged in many of the internal decisions
18 about how to configure the transaction, how to construct, and
19 how to negotiate the transaction.

20 Q. And you testified that it was part of Mr. Lima's business.
21 What are you referring to, what business?

22 A. Yes. This transaction and the business is part of the
23 global technology service of North America business. So it was
24 part of his business results, his objectives, and targets.

25 Q. Are IBM and Microsoft continuing to compete for cloud

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Zufiria - Direct

1 business from AT&T?

2 A. Yes, we continue competing in new pieces of the business in
3 AT&T and in many other clients.

4 Q. Did there come a time, Mr. Zufiria, when Mr. Lima began
5 reporting to you?

6 A. Yes. He start reporting to me on February 1 of 2019, last
7 year.

8 Q. And what role did Mr. Lima have at that time?

9 A. He was at that time general manager of GTS North America.

10 Q. So, was Mr. Lima already in that role when you took your
11 current job as senior vice-president of GTS?

12 A. Yes, he was already in the job of leading the GTS North
13 American business.

14 Q. And how often did you interact with Mr. Lima when you were
15 the senior vice-president of GTS and he was in the role of
16 general manager of GTS for North America?

17 A. Besides the formal reviews that we have every two weeks
18 formal reviews, I was interacting with him around transactions
19 on decisions of the business two to three times a week.

20 Q. What were Mr. Lima's responsibilities as the general
21 manager for GTS North America?

22 A. Would you repeat the question, please? I didn't hear you
23 well.

24 Q. What were Mr. Lima's responsibilities as the general
25 manager for GTS North America?

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Zufiria - Direct

1 A. He was running the full end-to-end business process and
2 profit for United States and Canada on GTS infrastructures
3 business.

4 Q. Did Mr. Lima's responsibilities require an understanding of
5 IBM strategy to win cloud business?

6 A. Yes, in two dimensions. One, the first dimension is about
7 the nature of the GTS business or business where he need to
8 know all the pricing structure, incentives systems and
9 competitive positioning. And at the same time because we
10 compete with others in collaboration with other parts of IBM,
11 he have to have also knowledge of other parts of IBM to compete
12 better. Our market, cost structure, efficiency problems, etc.,
13 that are part of how we make our business more competitive.

14 Q. As the general manager of GTS North America, did Mr. Lima
15 need access to IBM's confidential information to do his job?

16 A. Yes, he needed to have access to confidential information.
17 He needed to have access to all our investments, cost
18 structure, efficiency programs, automation programs, incentive
19 systems and many other dimensions of the business that are not
20 public and are the core of our company's business.

21 Q. As the general manager for GTS North America, did Mr. Lima
22 work with his GTS colleagues in other geographic regions?

23 A. Yes. First of all, we used to have systematic meetings all
24 the geographies together where we could discuss opportunities
25 in different geographies on how the business was performing,

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1 but at the same time the nature of our enterprise clients,
2 clients that are corporations make some of our transactions,
3 our relationships go beyond boundaries. For example, last year
4 we have a very important business with CitiBank that involved
5 business in Latin America as well as business in North America,
6 and we were better designing the balancing of the business on
7 the company strategy for that business.

8 Q. Was Mr. Lima involved in that transaction?

9 A. Yes, he was involved in the CitiBank transaction.

10 Q. How was he involved?

11 A. Well, he participated in the decision process of how we
12 could get North America and to get Latin America (inaudible) or
13 vice versa, and how we are determining the price, the margin,
14 with respect to the strategy for the client for the future.

15 THE COURT: I'm going to interrupt just because we're
16 having trouble again. So, if you could go back maybe two
17 sentences, if you recall what you were saying, it would be
18 great. If not, we'll strike the answer and ask the question
19 again. Can you remember what you were saying two sentences
20 back? It's not a test.

21 A. Yes, he participated in the decisions about margins between
22 North America and Latin America, benefits for the client and
23 our strategy moving forward with the client on a global basis.

24 Q. Mr. Zufiria, what was your opinion of Mr. Lima's
25 performance during the time that he reported to you?

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1 A. I think Mr. Lima was already around one year and a half in
2 his position. So, when I took the job, he was already in that
3 position, and I establish a very good working relationship with
4 him, and I started working with him in the business.

5 Q. Prior to Mr. Lima's resignation, was there an expectation
6 that Mr. Lima would advance to more senior roles at IBM?

7 A. When I took the job technically at that time from Ginni
8 Rometty which was the CEO and chairman of IBM. I got the
9 mission they told me to run the GTS business globally, also to
10 work in coaching and developing the next leaders for the GTS in
11 the future and for IBM. One of those interviewed who was
12 identified as a leader for the future of IBM was Mr. Lima. So
13 I start working with him and continue his development so that
14 he could reach the positions that were expected.

15 Q. And who gave you that mission to work with Mr. Lima on his
16 development?

17 A. The chairman and CEO of IBM, Ms. Ginni Rometty.

18 Q. Did you discuss with Mr. Lima his potential for promotion
19 at IBM?

20 A. Yes, we discussed this systematically from time to time
21 during all the time period that our relationship was in the
22 business. So we have meetings discussing about the future
23 potential, about the development areas, and how he could
24 continue progressing in IBM.

25 Q. Did you mentor Mr. Lima?

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Zufiria - Direct

1 A. I was not a formal mentor because we have a formal
2 mentoring program. I was his manager, and I did a lot of what
3 we call coaching which would be equivalent to mentoring.

4 MS. VELAZQUEZ: At this point, your Honor, I would
5 like to discuss material which IBM has designated highly
6 confidential relating to IBM's fall plan, and that is -- it's
7 going to be the next exhibit in the binder, so JX-90.

8 THE COURT: JX-090, so first let me hear on the issue
9 of -- are you asking me to seal the exhibit?

10 MR. SIGNORACCI: Yes, your Honor, but I can set it up
11 a little bit first.

12 THE COURT: OK. Well, I'll leave it to you.

13 BY MS. VELAZQUEZ:

14 Q. Mr. Zufiria, what is the fall plan?

15 A. The fall plan, the fall plan is a process that we run every
16 year for each one of the businesses in which we prepare all our
17 actions for the following year. We run things end of August
18 until middle of November, early December, in which we make all
19 the decisions of what we are going to invest, what accounts we
20 are going to cover, what movements we are going to make in the
21 business, and we agree on our mission of numbers and the
22 targets for the following year.

23 Q. And does GTS prepare materials for the fall plan?

24 A. Yes. The preparation is done, as I said from starting the
25 end of April until -- sorry -- the end of August until the end

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Zufiria - Direct

1 of November, first week of December. That's the period in
2 which we build the floor plan and each unit builds the fall
3 plan for direction.

4 Q. Did Mr. Lima prepare fall plan materials for GTS North
5 America in 2019?

6 A. Yes, he prepared the fall plan and present it to me of what
7 the numbers, the investments, and all the parameters and
8 actions to be executed during 2020 to succeed in the business.

9 Q. Mr. Zufiria, does IBM keep its fall plan materials
10 confidential?

11 A. Yes. We have a limited distribution of the fall plans
12 because we don't want our numbers to be known even internally
13 to a big part of our operation.

14 Q. And how does IBM limit access to fall plan materials?

15 A. In some cases we even prevent the copying of the files. We
16 mark all documents as IBM confidential, and we have security
17 rules that we follow for them.

18 MS. VELAZQUEZ: Your Honor, I would like to show the
19 witness JX-90, but I would ask if you could -- if we could
20 agree to seal the courtroom.

21 THE COURT: Let's go step at a time. First, with
22 respect to JX-90, Plaintiff's 5 for identification, is there
23 any objection to the document itself?

24 MR. DELIKAT: No objection.

25 THE COURT: Is there any objection to me sealing

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Zufiria - Direct

1 Exhibit 5 for identification?

2 MR. DELIKAT: No objection with the caveats that we
3 set forward previously.

4 THE COURT: Then with respect to sealing the
5 courtroom, is it that you would like to exclude Microsoft's
6 counsel from hearing the testimony that is about to take place,
7 is that it?

8 MS. VELAZQUEZ: Yes, your Honor, the fall plan
9 materials that I would like to discuss with the witness contain
10 highly confidential IBM material, as Mr. Zufiria can explain.

11 MR. McQUADE: I don't think we've reconnected, have
12 we, Frank?

13 MR. SIGNORACCI: I think the IBM's in-house did
14 reconnect.

15 MR. McQUADE: Teleconference. Can you put it on mute?

16 MR. DELIKAT: I don't think they can hear us.

17 DEPUTY CLERK: OK. I muted it.

18 MR. McQUADE: He's put everybody on mute.

19 THE COURT: Everybody is on mute. The witness is not
20 on mute. And your objection there is?

21 MR. DELIKAT: No objection on that.

22 THE COURT: So we will first admit what's previously
23 marked JX-090, a multipage document, as Plaintiff's 5 in
24 evidence. It will be marked sealed. I say for the moment
25 because I want to be really clear that we are not marking the

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Zufiria - Direct

1 world sealed. There's a rule, and we're going to comply with
2 the rule. But for the moment, to move things along for
3 certain, we're going to mark it sealed. I understand that if
4 Microsoft's counsel is on, she has been muted so she can't hear
5 and, Frank, I'll deem the courtroom sealed so that nobody
6 should come in or leave until we get done with this testimony.

7 DEPUTY CLERK: Should I lock the door?

8 THE COURT: No. We will just stop if I see someone
9 coming in. I don't think we need to lock the door just yet.
10 Thank you.

11 You can proceed.

12 MS. VELAZQUEZ: Thank you, your Honor.

13 Q. Mr. Zufiria, I'm showing you JX-90. It's an email sent by
14 Ray dePalma to Mr. Lima dated October 11, 2019, and the subject
15 line is unit 2020 fall plan cycle and reviews. First of all,
16 who is Ray dePalma?

17 A. Raymond dePalma was the COO for GTS North America reporting
18 to Rodrigo Lima, and he was with operations as the chief
19 operations officer for Mr. Lima.

20 Q. I would like to turn your attention to the attachment which
21 the color copy begins on page 10 of 14. Now, I will ask you
22 first, Mr. Zufiria, do you recognize the attachment?

23 THE COURT: Just let me interrupt. Sorry,
24 Mr. Zufiria.

25 Is this again something in native and then reprinted

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Zufiria - Direct

1 in color?

2 MS. VELAZQUEZ: Yes, your Honor.

3 THE COURT: Just so the record is clear, Exhibit 5
4 really consists of two versions of the exhibit: One in native
5 form, one in a beautifully colored format so we all can see it.

6 Sorry to interrupt. Ask your question again.

7 MS. VELAZQUEZ: Thank you, your Honor.

8 Q. Mr. Zufiria, do you recognize this attachment?

9 A. Yes. It's the document that explains the fall plan.

10 Q. Why is Mr. Lima's name on the cover?

11 A. Because he had the responsibility of this business, and he
12 has the accountability to execute this plan and this is the
13 proposal he brings, the things that he's going to do to deliver
14 the numbers we want to achieve.

15 Q. Did Mr. Lima review this document with you at the time?

16 A. Yes.

17 Q. And the cover of this PowerPoint is marked IBM
18 confidential. Do you see that, sir?

19 A. Yes.

20 Q. Is there confidential information in this document?

21 A. Yes. Yes.

22 Q. Let's take a look at the next slide, which is page 11 of
23 14. Can you tell me what about the financial model on the
24 left-hand side is confidential?

25 A. Yes. This model represents one of the sectors in North

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Zufiria - Direct

1 America. It describes the margins of the business, the
2 profitability, the decisions on investment.

3 Q. And let's take a look at the top bold plays on right-hand
4 side. First of all, can you tell me what is meant by IBM
5 preferred?

6 A. It meant that in our business when we serve our clients, we
7 try and meet a client, we take infrastructure half in that
8 particular moment. They have old machines, new machines, they
9 are consuming some public cloud. We take that and we move it
10 into the future, we make it more efficient, and in that
11 movement we prefer to regulate in our cloud, in our public
12 cloud. That mean IBM prefer, it means that our intent is to
13 convince the client that the best cloud for their needs is the
14 IBM public cloud, so we prefer and we propose them to come to
15 our public cloud.

16 Q. And let's focus on the first bullet under top bold plays.
17 Mandatory cloud first solutioning with Red Hat content. What
18 were the fall plan discussions about that topic?

19 A. Well, every time we meet a client with a solution for them
20 in the future, we always prepare it to move to cloud. We make
21 cloud part of the solution and because Red Hat, Red Hat plays
22 an important role here because it give us the platform to make
23 the movement much easier, therefore, the importance of public
24 combination with Red Hat.

25 Q. And how about four bullets down, what was discussed in the

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Zufiria - Direct

1 fall plan about considering acquisitions?

2 THE COURT: Hold on a second. If they're with us,
3 it's OK. If they're not with us, it's not OK.

4 MR. SIGNORACCI: They're all with us.

5 THE COURT: You're with us. It's OK. Sorry to
6 interrupt.

7 MS. VELAZQUEZ: Thank you.

8 Q. Mr. Zufiria, the bullet that begins "consider
9 acquisitions," what was the discussed about that in the fall
10 plan?

11 A. The question was about how we could accelerate the
12 development of the skills knowledge in volume to move faster in
13 the movement of our clients towards the public cloud. So we're
14 discussing the position of companies who have the skills, but
15 we can secure it faster and move more clients and faster to a
16 public cloud.

17 Q. What did you mean there by acquisition? What does that
18 mean?

19 A. It means buying a company to get the professionals and
20 those professional works for us become part of IBM. With the
21 knowledge they have, we made the business faster and better.

22 Q. How about the next bullet, what was discussed in the fall
23 plan about procreating a strategy between GTS, GBS, and global
24 markets to select target accounts?

25 A. Here we -- the pattern of how clients buy is changing, and

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Zufiria - Direct

1 sometimes we need to put together GTS --

2 THE COURT: We've got to stop you again. I'm sorry.
3 I apologize to you.

4 THE WITNESS: Sorry.

5 THE COURT: It's OK. Don't be sorry. Nobody is doing
6 anything inappropriately. We are struggling with the
7 communications. If you could go back maybe two sentences and
8 see if we can fill in what the reporter missed.

9 A. We are seeing clients are changing and buying these space.
10 They buy the projects with components of our GTS business and
11 pieces of GBS, which is another business inside IBM that
12 focuses on consulting. So, we find that we compete better when
13 we are going together, and here this is how we're going to go
14 together, GBS and GTS to which accounts, what are the accounts
15 that we are going to target going together.

16 Q. And is the list of target accounts referenced in this
17 bullet, is that list of target accounts confidential?

18 A. Yes. This list of accounts that we manage in our
19 conversations includes not only which accounts, also when we
20 are going to address the accounts.

21 Q. And how, if at all, would that information be significant
22 to a competitor of IBM?

23 A. Well, the competitor will know when we are going to knock
24 the door in the client, in a particular client, or how we are
25 going to bundle the different pieces of IBM, GTS and GBS to

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Zufiria - Direct

1 compete them. So knowing that information is very important
2 because it can define knowing what we do in strategy for the
3 competitor of how to counteract.

4 Q. And were the fall plan discussions for GTS North America
5 relevant to IBM's cloud business in Latin America?

6 A. First of all, many of the decisions are business-wide.
7 Many of our decisions are similar in different geographies
8 because we have the same competitors. But in the particular
9 case of North America, there are many clients that have
10 business interests in Latin America. Our biggest clients
11 operate globally and so they have business presence very
12 relevant in Latin America. So, therefore, the decisions that
13 are made in the U.S. started out to follow here as income in
14 our Latin America business.

15 Q. Now, switching topics, Mr. Zufiria, after IBM closed the
16 Red Hat acquisition, were there strategy meetings held to
17 discuss IBM's post acquisition strategy?

18 A. Yes.

19 Q. And were you invited to any of those meetings?

20 A. Yes, I was invited. We had a very important meeting. We
21 were all the senior vice-presidents to decide to define what
22 was going to be the strategy after the close of the position.

23 Q. Do you recall when that meeting was held?

24 A. I recall that meeting, yeah. I recall that meeting.

25 Q. Was Mr. Lima invited to that meeting?

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Zufiria - Direct

1 A. Yes, he was invited to the meeting.

2 Q. Was access to the meeting limited?

3 A. Yes. It was limited to the senior vice-presidents and
4 another five or six people that were relevant for the
5 conversation and also this meeting is used to help in the
6 development of our future leaders, by inviting them to
7 participate in the meeting.

8 MS. VELAZQUEZ: I would like to show the witness
9 JX-63.

10 THE COURT: Let's mark for identification what's
11 previously been labeled JX-63 as Plaintiff's 6 for
12 identification.

13 MR. DELIKAT: No objection.

14 THE COURT: So JX-63 will now be 6 in evidence.

15 (Plaintiff's Exhibit 6 received in evidence)

16 BY MS. VELAZQUEZ:

17 Q. Mr. Zufiria, I'm going to show you an email on page one
18 sent by Ken Keverian to Mr. Lima and others on July 9, 2019.
19 Subject line August 2, mini-offsite. First of all, who is
20 Mr. Keverian?

21 A. Mr. Keverian is the head of the strategy for IBM, and he
22 was the chairman that called this meeting. He was organizing
23 the meeting.

24 Q. And Mr. Keverian writes in this email: "Would be great if
25 you could join this."

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Zufiria - Direct

1 What is Mr. Keverian inviting Mr. Lima to join?

2 A. As I said, there are two reasons. One, his relevance in
3 the conversation because he was very close of the position and
4 knowledge, and also because to these kind of meetings we invite
5 the future leaders so because this is a development for them to
6 participate in these meetings.

7 Q. And, Mr. Zufiria, did IBM limit access to this particular
8 meeting?

9 A. Yes, they would limit the access to this meeting, yes, very
10 limited.

11 Q. Can you tell us who was invited to participate in this
12 meeting?

13 A. They called the meeting were the senior vice presidents,
14 and as you can see here, this invitation goes to Ellie Keenan,
15 Mr. Lima and Mr. Phil Guido. There was another person Mr.
16 Barben (ph) which was not listed here but was also invited.

17 MS. VELAZQUEZ: Your Honor, just as a housekeeping
18 matter, I just wanted to clarify that we'd like to admit
19 Plaintiff's Exhibit 6 under seal.

20 THE COURT: Any objection to sealing 6 in evidence
21 belatedly?

22 MR. DELIKAT: No.

23 THE COURT: No belated objection. Sealed. For the
24 moment I say that and I mean that I'm not sure what's sealable
25 here just yet, but I'm happy to keep an open mind about it.

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Zufiria - Direct

1 MS. VELAZQUEZ: Thank you, your Honor.

2 Q. Did Mr. Lima attend this meeting?

3 A. Yes.

4 Q. Did you attend the meeting?

5 A. Yes.

6 Q. Let's take a look at the agenda. So, can you tell us what
7 was the purpose of this particular meeting?

8 A. The purpose of this particular meeting was to prepare
9 ourselves for our actions that we're going to execute starting
10 the moment which acquisition was approved. We were preparing
11 ourselves for all the decisions on the strategy that we're
12 going to execute after the signature.

13 Q. And was the focus of this meeting only on the first hundred
14 days after the acquisition?

15 A. That was about the activities we were going to do and also
16 sharing also the developments and the investments for the
17 future, and we're going to reconfigure our --

18 THE COURT: Say it again, please? Reconfigure.

19 A. Reconfigure our software for portfolio, software portfolio.

20 MR. SIGNORACCI: Software portfolio.

21 THE COURT: Thank you. Thank you.

22 (Continued on next page)

23

24

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Zufiria - Direct

1 BY MS. VELAZQUEZ: (Continuing)

2 Q. And do you see that there is an agenda line about the open
3 hybrid cloud platform and can you tell us what that discussion
4 concerned?

5 A. Yes. It was basic -- in this section we discussed how we
6 were going to change the software portfolio for IBM, how we
7 would invest in Red Hat products to become more competitive in
8 the future.

9 Q. Was there discussion about products that had not yet been
10 developed?

11 A. There was discussion on product that worked on the
12 development and that had already been announced and there were
13 products that were under development that had not been
14 announced.

15 Q. And would you be concerned if information that was
16 discussed at this meeting were known to IBM competitors?

17 A. Yes, because the competitors will know when we are placing
18 our bets, or money difficulties and advantages that we have in
19 the different parts of our portfolio.

20 Q. Mr. Zufiria, changing topics again, was there an IBM board
21 of directors strategy meeting in September 2019?

22 A. Yes.

23 Q. And why is that meeting referred to as a strategy meeting?

24 A. Once a year all the senior vice presidents meet with the
25 members of the board of directors for two days in order to

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Zufiria - Direct

1 share with them our strategies what we are investing for the
2 future for the following three to five years, what decisions we
3 are making to make our business more competitive in the future.

4 Q. And does IBM prepare materials in advance of its board
5 strategy meeting?

6 A. Yes. There is a lot of work by the business units to
7 prepare that material and to prepare also the sessions and the
8 conversations with the members of the board.

9 Q. And are those materials kept confidential?

10 A. Yes, they are very confidential -- very confidential.

11 Q. How are those materials kept confidential?

12 A. They are only shared with the senior vice presidents, the
13 members of the board, we don't allow copies, and only the
14 people that goes to the meeting is able to see the picture.

15 MS. VELAZQUEZ: I would like to offer into evidence
16 JX 86.

17 MR. DELIKAT: No objection.

18 THE COURT: JX 86 now --

19 MS. VELAZQUEZ: This is under seal, your Honor.

20 THE COURT: Plaintiff's Exhibit 7.

21 Do we have a sealing objection?

22 MR. DELIKAT: No objection.

23 THE COURT: What has been marked JX 86 is now
24 Plaintiff's Exhibit 7 in evidence and sealed.

25 (Plaintiff's Exhibit 7 received in evidence)

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Zufiria - Direct

1 BY MS. VELAZQUEZ:

2 Q. So let's go to the nice color version on page 69 of 134.

3 THE COURT: Again, counsel, just so we are clear, I
4 would like to have a very clear record. This is again two
5 versions of a document, one of which was reproduced in color,
6 the other which is in native form; correct?

7 MS. VELAZQUEZ: That's right, your Honor.

8 THE COURT: Thank you.

9 MS. VELAZQUEZ: Thank you. I apologize.

10 THE COURT: Don't apologize. I am just trying to make
11 it clear.

12 BY MS. VELAZQUEZ:

13 Q. Do you recognize this document, Mr. Zufiria?

14 A. Yes.

15 Q. And what is it?

16 A. This was the meeting happened Yorktown Heights in our
17 research lab.

18 Q. And what is this document?

19 A. An agenda of the meeting for the first day and the second
20 day. It was a two-day meeting.

21 Q. How about the entirety of the document; can you tell the
22 Court what the entirety of the document is?

23 A. Yes. This is a meeting agenda -- can you repeat the
24 question?

25 Q. Sure. Can you tell the Court, just explain briefly what

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Zufiria - Direct

1 the entire document is? Maybe we should go back to page 68.

2 A. The entire document is all the material that was discussed
3 in this strategy session during the two days.

4 Q. And were you present for this meeting?

5 A. Yes, I was present.

6 Q. Was Mr. Lima invited to this meeting?

7 A. Yes, he was invited.

8 Q. Who selected Mr. Lima to participate in this meeting?

9 A. It was chairman and CEO, this is Ginni Rometty.

10 Q. Why did Ms. Rometty select Mr. Lima to participate in this
11 meeting?

12 A. This meeting is done, as I said, once a year with the
13 participation of the senior vice president in the company, and
14 every year the chairman decides to invite four or five
15 additional general managers that represents the next generation
16 of leaders for IBM. The result is this way these new leaders
17 get exposed to the board of directors so the board members know
18 what is the next generation of leaders -- potential leaders of
19 IBM.

20 Q. And had Mr. Lima been invited to board strategy meetings in
21 previous years?

22 A. I know he was invited in the previous year when he was not
23 working for me.

24 Q. And what is the significance of the fact that Mr. Lima had
25 been invited to board strategy meetings in prior years?

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Zufiria - Direct

1 A. One is that he was already identified as a potential leader
2 and he was one of the few that was invited more than once to
3 this meeting, very few. So, it is a clear indication that we
4 have high expectations for Mr. Lima. As a result of that, he
5 was exposed to more confidential information that is very
6 limited in our future long-time investments.

7 Q. So let's take a look at the agenda on page 69. Do you see
8 that you are listed as a presenter on day two?

9 A. Yes.

10 Q. And did you give a presentation to the board of directors?

11 A. Yes, I presented here.

12 Q. And this agenda indicates that Mr. Lima also participated
13 in that presentation?

14 A. Yes.

15 Q. Did Mr. Lima also give a presentation to the board at the
16 September 2019 strategy meeting?

17 A. Yes; and he was part of my presentation.

18 Q. This agenda indicates that on day one Arvind Krishna gave a
19 presentation on *IBM's hybrid cloud strategy: Countering our*
20 *fiercest competitors.*

21 Did Mr. Krishna give that presentation to the board?

22 A. Yes.

23 Q. And on day two Mr. Krishna, and others, also gave a
24 presentation on cloud and cognitive software. Did Mr. Krishna
25 give that presentation to the board?

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Zufiria - Direct

1 A. Yes.

2 Q. Let's take a look at one of the slides from Mr. Krishna's
3 first presentation on day one of the board strategy meeting
4 that is on page 81. Is Microsoft one of the IBM's cloud
5 competitors identified on this slide?

6 A. Yes; taken with four significant competitors, AWS,
7 Microsoft, Google, and Alibaba.

8 Q. And can you explain to us what this slide is conveying
9 about Microsoft?

10 A. We are following here how Microsoft is playing the battle,
11 how they are leveraging their incumbency. There Office Windows
12 to move clients into the public cloud. Also how, they are
13 moving now in what we call the hybrid game in the last bullet
14 in moving them from the public cloud into the private cloud
15 where we are strong, and into the client data.

16 Q. So, let's take a look at Mr. Krishna's presentation on day
17 two of the board strategy meeting, that begins on slide 36
18 which is page 1 of 3. I think you testified already,
19 Mr. Zufiria, that Mr. Krishna did indeed give this
20 presentation?

21 A. Yes.

22 Q. So, within that presentation there is a discussion about
23 winning in AI, on page 107. Is the information that was
24 presented by Mr. Krishna on artificial intelligence material
25 that Mr. Lima would have been exposed to as part of his

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Zufiria - Direct

1 day-to-day job running GTS?

2 A. No. It is very clear that participating in this meeting
3 gives a much broader view of the total IBM strategy, not only
4 the one that is relevant to GTS. In particular, winning in
5 AI -- artificial intelligence -- here we discussed this, the
6 investments and the technologies we were going to use to be
7 competitive, Microsoft and other players in artificial
8 intelligence.

9 Q. Now, I think we already saw on the agenda that on day two
10 of the board strategy meeting you also gave a presentation to
11 the board, correct?

12 A. Yes.

13 Q. And can you tell us were there materials prepared to help
14 you prepare for that presentation?

15 A. Yes. We dedicated time with my team and with Mr. Lima,
16 with his participation, of how to prepare the presentation in
17 the meeting.

18 Q. And was access limited to those preparation materials?

19 A. Yes.

20 Q. And how was access limited to those preparation materials?

21 A. Only to the people that is invited to the meeting; the
22 senior vice presidents and the people that were invited had
23 access to that information.

24 MS. VELAZQUEZ: I would like to submit as Plaintiff's
25 Exhibit 8 proffer into evidence JX 84.

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Zufiria - Direct

1 THE COURT: I will mark JX 84 as Plaintiff's Exhibit 8
2 for identification. And, also under seal?

3 MS. VELAZQUEZ: Under seal.

4 THE COURT: Counsel?

5 MR. DELIKAT: No objection.

6 THE COURT: No objection. JX 84 will be admitted into
7 evidence as Plaintiff's Exhibit 8 and it will be considered
8 under seal. Again, two copies of the same document, counsel?

9 MS. VELAZQUEZ: Yes, your Honor.

10 THE COURT: Okay.

11 MS. VELAZQUEZ: I think this is the last one like
12 this.

13 THE COURT: Okay. You can have as many as you like.

14 (Plaintiff's Exhibit 8 received in evidence)

15 BY MS. VELAZQUEZ:

16 Q. Mr. Lima, on page 1 there is a September 18, 2019 e-mail to
17 you copying Mr. Lima and others and the subject line is
18 September board of directors draft speaker notes.

19 Did you receive this document in preparation for your
20 presentation to the board?

21 A. Yes.

22 Q. And did you discuss the materials attached in preparation
23 for your presentation to the board?

24 A. Yes. We discussed this with -- yes, I discussed this with
25 Mr. Lima and Mr. Bart Van Dendaele who is on my team.

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Zufiria - Direct

1 Q. So, let's go to the first slide of the presentation of this
2 document which is on page 18. Do you see, is Mr. Lima
3 identified there as one of the panelists?

4 A. Yes.

5 Q. Now, according to these speaker notes, if you look on page
6 22 of 33 you were assigned to present this slide. Did you
7 present this slide to the board?

8 A. Yes.

9 Q. And what did you discuss?

10 A. The market opportunity is very big for services on cloud.
11 We are going to change our go-to market, the way of selling IBM
12 services, leverage our incumbency services, decline that we
13 have today to move them into the cloud into the hybrid cloud --
14 public cloud and private cloud and we are going to use Open
15 Shift which is Red Hat in this movement.

16 Q. You mentioned leveraging our incumbency. What do you mean
17 by that?

18 A. Today we will run, because of our big market share, many
19 applications, workloads for our clients. So, because we run
20 them today we want to move them keep them -- yes. Moving to
21 the analogy of the houses we have many clients today in our
22 house in GTS, we have a big market share in traditional
23 environments and we want to move those clients' workloads into
24 the future of our IBM private cloud that's leveraging our
25 incumbency.

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Zufiria - Direct

1 Q. And when you gave this presentation, did you discuss IBM's
2 competition against Microsoft for public cloud business?

3 A. Yes. Actually, the idea of getting GTS plus the other part
4 of services, GTS together, we thought public cloud is to make
5 our proposition stronger and compete better with Microsoft.

6 Q. Let's skip ahead to page 33 which is the last slide of this
7 presentation. Page 33, thank you. At this point this reflects
8 that the panel was handed over to panelist discussion?

9 A. Yes.

10 Q. What did Mr. Lima speak to the board of directors about in
11 that panel discussion?

12 A. He specifically described how the buying behavior of the
13 clients were changing and they were buying the movement and the
14 new house at the same time and how important it was to get it,
15 GTS and -- the other piece of IBM, GTS together to compete
16 better and he was bringing his experience of talking to clients
17 on how this was happening.

18 MS. VELAZQUEZ: Okay. So I want to move on to the
19 next document and submit, for evidence, JX 85.

20 THE COURT: JX 85 we will mark as Defendant's Exhibit
21 9 for identification.

22 MR. DELIKAT: No objection.

23 THE COURT: No objection.

24 You want it sealed, counsel?

25 MS. VELAZQUEZ: No, your Honor.

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Zufiria - Direct

1 THE COURT: Okay. This document is in evidence as
2 Plaintiff's Exhibit 9 and it will not be sealed.

3 (Plaintiff's Exhibit 9 received in evidence)

4 BY MS. VELAZQUEZ:

5 Q. Can you identify this document, Juan?

6 A. Yes.

7 Q. And what is it?

8 A. It is the seating plan for the large dinners.

9 Q. And are seating charts regularly prepared for board of
10 directors meetings?

11 A. Always.

12 Q. And this seating chart shows that you were seated on table
13 3 on day 2?

14 A. Yeah.

15 Q. Who else was seated at table 3 with you?

16 A. It was Mr. Keverian, CEO vice president of strategy, board
17 members Gorsky; Mr. Eske was a more senior member; Mr. Krishna
18 which is the current CEO of IBM; myself -- Mr. Lima and myself.

19 Q. Did Mr. Lima ever speak with you about competition between
20 IBM and Microsoft for cloud business?

21 A. We discussed this many times, that the second discussions
22 and he and I --

23 Q. Juan, could you start again? He and I?

24 A. Yes. He and I discussed many times how the strategy
25 against Microsoft, how we could compete better, what changes we

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Zufiria - Direct

1 would make to compete.

2 MS. VELAZQUEZ: Now I would like to show you JX 13 and
3 submit that into evidence as Plaintiff's Exhibit 10.

4 THE COURT: Hold on. The binder has exhibits before
5 that. Are we taking them out of the binder because we are not
6 going to use them?

7 MS. VELAZQUEZ: I am going out of order. I am trying
8 to cut a little bit as well, your Honor.

9 THE COURT: Should I return the documents in between?

10 MS. VELAZQUEZ: We can always adjust after the
11 examination.

12 THE COURT: I have enough, I don't need more.

13 JX 13 is marked for identification as Plaintiff's
14 Exhibit 10. Any objection?

15 MR. DELIKAT: No objection.

16 THE COURT: Sealing not? No?

17 MS. VELAZQUEZ: No, your Honor.

18 THE COURT: No sealing. Okay. JX 13 is now
19 Plaintiff's Exhibit 10 in evidence.

20 (Plaintiff's Exhibit 10 received in evidence)

21 BY MS. VELAZQUEZ:

22 Q. Can you identify this document, Mr. Zufiria?

23 A. Uh-huh.

24 Q. What is it?

25 A. Yes. Yes.

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Zufiria - Direct

1 Q. It appears to be an e-mail from Mr. Lima to Bart
2 Van Dendaele copying you dated February 26, 2019. Do you see
3 that?

4 A. Yes.

5 Q. And did you receive this document on or about February 26,
6 2019?

7 A. Yes.

8 Q. And if you go to page 2 of 3, starting at the very bottom
9 of the page and carrying over to page 3 there is an earlier
10 e-mail from Mr. Lima to you and Mr. Van Dendaele dated February
11 26 and the subject line is Microsoft azure cloud computing
12 platform and services and Mr. Lima writes: Worth reading.

13 What is he forwarding to you, sir?

14 A. Well, he was worried about Microsoft hacking some of our
15 accounts -- all of the accounts, I would say, and he tendered
16 this document describing elements of actions that Microsoft
17 were doing to compete with us.

18 Q. And if you go to the first e-mail -- I am on page 1 which
19 is the last e-mail in time. Can you explain what Mr. Lima is
20 communicating to you in that e-mail?

21 A. Well, they say that the strategy of Microsoft was to
22 establish various small with EC priors in our clients but it
23 was present in all our clients, and they were also leveraging
24 the incumbency on the office space and they were building
25 capabilities to do the moving of the workloads to the new

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Zufiria - Direct

1 house.

2 Q. I want to show you another example of an e-mail
3 conversation between you and Mr. Lima, JX 342, which is the
4 last tab in this binder.

5 THE COURT: Okay. We are going to mark JX 342 as
6 Plaintiff's Exhibit 11 for identification.

7 MS. VELAZQUEZ: And I would like to submit this one
8 under seal, your Honor.

9 THE COURT: Yes; 342 has two requests; one for
10 admissibility, counsel?

11 MR. DELIKAT: No objection.

12 THE COURT: And two as to sealing, counsel?

13 MR. DELIKAT: No objection.

14 THE COURT: No objection to either. Thank you.

15 11 is now in evidence, JX 342.

16 (Plaintiff's Exhibit 11 received in evidence)

17 BY MS. VELAZQUEZ:

18 Q. Mr. Zufiria, can you identify this document?

19 A. Yes.

20 Q. Is this a September 21, 2019 e-mail change involving
21 Mr. Lima, you, Ginni Rometty, and current CEO Arvind Krishna
22 regarding a client account?

23 A. Yes.

24 Q. I want to focus you on the September 21 e-mail at 9:01 in
25 the morning that begins at the bottom of this page and it

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Zufiria - Direct

1 carries over to page 2. Is Mr. Lima addressing Ginni Rometty?

2 A. Yes.

3 Q. Now, if you look at page 2 do you see where he writes: We
4 did add IBM cloud into -- and he lists a number of clients -- I
5 won't let this one be different.

6 A. Yes.

7 Q. Can you explain what Mr. Lima meant by that statement?

8 A. Yes.

9 Basically he was saying that he knows the new
10 contracts that we are having in our base of clients, we are
11 literally using IBM public cloud.

12 Q. And so then let's look at the top e-mail on the first page
13 which is the last one in time. Can you explain what Mr. Lima
14 was communicating to Ms. Rometty and you and Mr. Krishna when
15 he wrote: We need to use our incumbency and not to defend but
16 attack.

17 A. Yes.

18 The previous list of clients was an assisted list of
19 clients when we were leveraging our incumbency, using our
20 relationship and recording contracts to introduce the IBM
21 public cloud. Mr. Lima was saying this is not enough, we need
22 to go to the places where Microsoft is dominant and we need to
23 attack there.

24 Q. Can you give me any examples of recent client deals that
25 Mr. Lima was involved in in which IBM competed that involved

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Zufiria - Direct

1 Microsoft?

2 A. We mentioned before the AT&T case. There is another case
3 this year in Anthem, okay, in the first quarter this year it
4 was recompeted.

5 Q. And can you explain how we competed against Microsoft --
6 how IBM competed against Microsoft in the Anthem deal?

7 A. In most of the cases we compete with us at the beginning
8 with two players, Microsoft plus a services company who does
9 the moving. We compete against two employers, Microsoft and
10 the other services company.

11 Q. And what was Mr. Lima's involvement in the Anthem deal?

12 A. The account of IBM, it was under his new responsibility
13 this year so he was involved in the design of the transaction
14 in designing the model of Mystic in which we put the public
15 cloud of services and the GTS services together to compete
16 better.

17 Q. So, Mr. Zufiria, changing topics, did Mr. Lima express any
18 frustrations to you about the GTS business?

19 A. Sorry. Could you repeat again?

20 Q. Sure.

21 Did Mr. Lima express any frustrations to you about the
22 GTS business?

23 A. Yes. Every time we meet and discuss the leadership team we
24 discussed about the things we need to improve, where we need to
25 place investments, how fast we are moving and, in general, we

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Zufiria - Direct

1 talk about the things that can be improved so this comes with
2 frustration.

3 Q. Did Mr. Lima express to you the view that some of these
4 issues had improved under his watch?

5 A. Several years ago when Mr. Lima took the job, the quality
6 of our service to our clients was not good and in the first
7 year and a half Mr. Lima changed that. He improved the quality
8 of the service, which is the base of our business, and clients
9 had started liking IBM GTS again in North America.

10 Q. Did GTS North America have a goal for bringing in new
11 business in 2019?

12 A. Once the quality of the service was better, good, the
13 challenge of the business was how we can bring more clients or
14 more business in assisting clients. So, there was the vision
15 of how to acquire new business and that was the focus for 2019.

16 Q. And was Mr. Lima involved in setting that goal for new
17 business in 2019?

18 A. Yes. He personally committed with his leadership team, the
19 leadership team of GTS North America, to bring an amount of new
20 business.

21 Q. And what was that commitment that Mr. Lima made?

22 A. It was a commitment to sign \$5 billion of new business
23 during the year.

24 THE COURT: Five billion? Did you say five billion or
25 five million?

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Zufiria - Direct

1 THE WITNESS: Five billion. Billion with a B.

2 THE COURT: B.

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 THE WITNESS: They themselves committed that they
6 would not get incentives as a team if they don't reach that
7 number.

8 BY MS. VELAZQUEZ:

9 Q. Was that goal achieved in 2019?

10 A. No.

11 Q. Did IBM consider whether a different goal might make sense
12 for Mr. Lima in 2020?

13 A. We considered that because of several dimensions. We
14 thought that after almost three years in the job now that the
15 quality of service was good, probably changing leadership to go
16 to win more business could be good for the business and at the
17 same time we wanted to continue developing Mr. Lima for the
18 future so we thought that probably exposing him to other jobs
19 would continue his development.

20 Q. Was the possibility of changing roles something that you
21 and Mr. Lima discussed in 2019?

22 A. Yes. We discussed several times of the convenience for the
23 business and for himself of considering a potential change.

24 Q. And in 2019 did Mr. Lima indicate to you that he was open
25 to changing roles at IBM?

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Zufiria - Direct

1 A. Yes.

2 Q. And did there come a time when Mr. Lima left the role of
3 general manager for North America GTS?

4 A. That was in January this year.

5 Q. And how did that come about?

6 A. There was a conversation among the senior VPs. We thought
7 that, based on the two dimensions, the need for a change in
8 leadership and the probably continuing developing Mr. Lima
9 through new responsibilities would be a good moment of change
10 and senior leaders, senior vice presidents, we decided to make
11 the change.

12 Q. So I wanted to submit I think what will be our last exhibit
13 which is JX 103, Plaintiff's Exhibit 12, and this one under
14 seal, your Honor.

15 THE COURT: Okay. JX 103 is marked 12 for
16 identification. Is there any objection by the defendant?

17 MR. DELIKAT: Is that in the book?

18 MS. VELAZQUEZ: Yes, it is in the book.

19 THE COURT: It is out of order.

20 MS. VELAZQUEZ: Yes, it is. We had moved things
21 around. I'm sorry, your Honor.

22 MR. DELIKAT: I see it.

23 THE COURT: I'm okay with it being out of order.

24 MR. DELIKAT: No objection.

25 THE COURT: No objection to it being marked in

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Zufiria - Direct

1 evidence and sealed, correct?

2 MR. DELIKAT: With the same reservations we expressed
3 before on sealing.

4 THE COURT: I don't know what that means for both of
5 us but we are reserving everything as we go. I just want to
6 emphasize that sealing a document in the modern era requires a
7 fairly delicate balance and there has to be a really good
8 reason to seal. Some of these I might be able to understand,
9 others I have some concerns about, but for the moment it is
10 evidence in under seal.

11 MS. VELAZQUEZ: Thank you, your Honor.

12 (Plaintiff's Exhibit 12 received in evidence)

13 BY MS. VELAZQUEZ:

14 Q. Mr. Zufiria, this is an e-mail from Bridget Van Kralingen
15 to you dated January 10, 2020 on which others are copied.

16 Do you see that, sir?

17 A. Yes.

18 Q. And can you identify the individuals who are copied on this
19 e-mail?

20 A. Yes I can see me; Ginni Rometty; Diane Gherson, the head of
21 human resource; Mark Foster, the head of five-year services;
22 Mr. Martin Schroeter was the head of IBM global markets.

23 Q. Can you explain to the Court what you and the others on
24 this e-mail chain are discussing?

25 A. We offered Mr. Lima two different job opportunities that

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Zufiria - Direct

1 could help to progressing his development. And after my
2 conversation with him he had a conversation with --

3 Q. Sorry, Juan. After your discussion with him --

4 A. After my discussion with him in which we offered him the
5 two jobs he said he was going to talk to Bridget Van Kralingen
6 and here we have the note that Bridget wrote to all of us after
7 she had the conversation with Rodrigo.

8 Q. And what were the two roles that Mr. Lima was offered?

9 A. The first job was a --

10 THE COURT: Sorry, stop. The first was?

11 THE WITNESS: Technology support services. Technology
12 support services.

13 THE COURT: GM.

14 THE WITNESS: Yes.

15 THE COURT: Got it.

16 BY MS. VELAZQUEZ:

17 Q. And the second role?

18 A. The second was to link all the interrelated accounts, the
19 most important accounts of five year, our biggest accounts.

20 Q. And how did the two roles that Mr. Lima was offered in
21 January 2020 compare to his role running GTS North America?

22 A. They were roles of the same level, the same bank, both are
23 general managers, and both members of the performance team.

24 Q. And did Mr. Lima select a role in January 2020?

25 A. Yes. He decided to select the interrelated account role.

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Zufiria - Direct

1 Q. Wrapping up now, how did you first become aware that
2 Mr. Lima had resigned from IBM?

3 A. Well, I got a call from Sam Ladah. He told me about
4 Rodrigo resigning and going to work for Microsoft. He did it
5 because he knew I have invested a lot of time in the
6 development of Rodrigo and he was a very important leader in my
7 organization last year, and I just can imagine he thought a lot
8 of thoughts through my brain about all the hours we were
9 discussing about how to compete against Microsoft and now all
10 that knowledge was going to go into Microsoft.

11 Q. And so to wrap up, sir, did you have concerns about
12 Mr. Lima taking the role of corporate vice president for Latin
13 America at Microsoft without waiting the 12-month period
14 specified in the non-compete agreement?

15 A. Yes. I have big concerns. First of all, Microsoft is one
16 of our biggest competitors at this moment. Second, that he has
17 a lot of confidential information in his brain that would not
18 allow him to do his job, use it. It is difficult to have a
19 Chinese wall in your brain and not to use what you know to
20 compete and that knowledge, in the case of Mr. Lima, is what
21 you know because of his job, also because of his relevance in
22 IBM and the participation in meetings beyond -- this
23 information beyond his job. Also, all the strategies about
24 our, how we are competing with IBM services, how we are
25 constructing a public cloud to compete in the financial

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Zufiria - Direct

1 services sector, our strategy around Red Hat investments. All
2 the things about our business in North America this year as
3 well as in the big clients who has operations in Latin America.
4 The participation of all the strategy meeting with the both
5 knowing all the investment, all the future of IBM. And
6 finally, also knowing what IBM knows and thinks about Microsoft
7 is a big concern to be used by Microsoft against IBM.

8 MS. VELAZQUEZ: Thank you, Mr. Zufiria.

9 THE COURT: Mr. Zufiria, I noticed in your e-mail to
10 Ginni you said that Mr. Lima was -- you had talked to him, I
11 guess this is January 8th, he was disappointed and he felt that
12 he was not useful. Tell me a little bit about that
13 conversation, if you don't mind, what you recall -- first of
14 all, let me ask the question. Do you recall that conversation
15 that's referenced in your January 8 e-mail which is a part of
16 Plaintiff's Exhibit 12 in evidence?

17 Do you remember having a conversation with Mr. Lima on
18 January 8?

19 THE WITNESS: Yes, I remember that conversation.

20 THE COURT: You remember it generally, I assume you
21 don't remember every word you said to him and every word he
22 said to you; correct?

23 THE WITNESS: Correct.

24 THE COURT: Okay. So, tell me as best you recall,
25 tell me what Mr. Lima said to you and what you said to Mr. Lima

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Zufiria - Direct

1 on the evening of January 8 when you spoke to him about, I
2 presume, the topic of changing jobs.

3 THE WITNESS: Yes. I called him into my office and we
4 met face to face --

5 THE COURT: Where was your office?

6 THE WITNESS: The office was in Madison 590 in New
7 York City.

8 THE COURT: Okay. Go ahead.

9 THE WITNESS: I told him that all the senior VPs have
10 decided to make the change in the organization, the change that
11 we have been discussing in the past and he was disappointed for
12 two reasons; one is because he was expecting the new jobs being
13 bigger, a promotion, not a movement into the same level; and
14 the second because probably he worked at -- he was leaving the
15 business without the recovery he was expecting.

16 THE COURT: Is that a reference to the \$5 billion that
17 he was committed to in 2019?

18 THE WITNESS: That was only one of the parameters,
19 okay, there were other parameters. We also didn't see the
20 progress that we were expecting.

21 THE COURT: Okay. This is a person you trusted, yes?

22 THE WITNESS: Yes.

23 THE COURT: Do you believe he talked plainly to you
24 when he was speaking to you?

25 THE WITNESS: I think so.

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Zufiria - Direct

1 THE COURT: Did you talk plainly to him?

2 THE WITNESS: Yes.

3 THE COURT: Did you encourage him to stay at IBM? If
4 you recall.

5 THE WITNESS: No. At that moment he didn't say about
6 leaving IBM, I don't remember that.

7 THE COURT: Okay.

8 THE WITNESS: The previous year sometimes he said
9 maybe I need to take a break or not because he was working very
10 hard and I encouraged him to change his balance of life and to
11 continue progress in the business.

12 THE COURT: In your discussions with him I am just
13 trying to get an understanding from your point of view, it's
14 important to me, in the discussions that you had been having
15 with Mr. Lima about his performance and what not, did you
16 suggest or was there any indication to Mr. Lima that they would
17 take him out of this role and move him into a -- I don't know
18 how to say it better than -- a higher role, not a parallel role
19 to where he was, not at the same level. Was there any
20 discussion that led him to be thinking about the fact that he
21 was going to be taken out of this role but given more
22 responsibility in a different area?

23 THE WITNESS: There was a lot of conversation about
24 him becoming a bigger leader in idea in the future, not
25 specifically from this job to become a senior vice president,

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Zufiria - Direct

1 but we discussed many times that he would become a senior vice
2 president after completing different jobs with good
3 performance.

4 THE COURT: He would be considered for the slot of
5 senior VP after other jobs. Okay.

6 THE WITNESS: After other jobs.

7 THE COURT: And successful completion of other jobs.

8 THE WITNESS: I would say this, that progression in
9 his role as leader, okay, because sometimes one year you -- and
10 others can be good but you can still progress as a leader as
11 you manage divisions.

12 THE COURT: Okay. And there was no indication or
13 discussion at that time that he was going to leave IBM, to your
14 knowledge?

15 THE WITNESS: No. He discussed about taking a leave
16 of absence at the meeting of the 2019 because he was stressed
17 and we talked several times and I tried to convince him to
18 change his work/life balance because he was working very, very
19 hard, okay, and to feel better and probably even perform
20 better.

21 THE COURT: When say work/life balance, we were all
22 working very, very hard. Lawyers work hard, they work 18 hours
23 a day. How do people at IBM work? How many hours?

24 THE WITNESS: It depends a lot. 10, 11 hours. It
25 depends on the person. There is people that work more or less.

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Zufiria - Cross

1 THE COURT: Okay. I interrupted the flow. Thank you.
2 Any cross?

3 MR. DELIKAT: Yes, your Honor.

4 THE COURT: I thought so. Would you like to stay
5 seated?

6 MR. DELIKAT: Yes, your Honor, if I could please stay
7 seated.

8 THE COURT: Absolutely. Happy to have you stay
9 seated.

10 MR. DELIKAT: I think I have lost the feed.

11 THE COURT: I have too. We are looking at the clock,
12 it is 10 to 4:00.

13 MR. DELIKAT: We will get straight into it, your
14 Honor. We don't need a break, it is up to you.

15 THE WITNESS: I'm fine.

16 THE COURT: All right. Proceed.

17 CROSS EXAMINATION

18 BY MR. DELIKAT:

19 Q. Thank you, your Honor.

20 Good afternoon, Mr. Zufiria. This is Mike Delikat. I
21 am sitting at the table, I am waiving at you; I am the same
22 person that took your deposition in this case. I am going to
23 be asking you a series of questions. Some of them will call
24 for a yes or no answer. If you could answer those questions
25 that way we would appreciate it. Your lawyer can come back and

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Zufiria - Cross

1 ask any clean up questions or explanation questions but if the
2 question calls for a yes or no answer, I ask you to answer it
3 that way.

4 Do you understand?

5 A. Yes.

6 THE COURT: And the Judge is asking you to do the
7 same, please.

8 BY MR. DELIKAT:

9 Q. So let's start with the titles of executives at IBM. You
10 are a senior vice president of GTS, correct?

11 A. Yes.

12 Q. And with responsibilities globally for GTS, correct?

13 A. Yes.

14 Q. And there are seven senior vice presidents at IBM, correct?

15 A. How many you said?

16 Q. I believe seven. Or is that the incorrect number?

17 A. There are more. I think in total with a title there are
18 around 12, if I believe I am correct.

19 Q. So there are 12 senior vice presidents, correct?

20 A. Yes.

21 Q. And you, as a senior vice president, Mr. Zufiria, report to
22 another senior vice president, correct?

23 A. Yes.

24 Q. And his name is Mark Foster; is that correct?

25 A. Yes.

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Zufiria - Cross

1 Q. And for how long have you reported to Mark Foster who is a
2 senior vice president?

3 A. Since April this year.

4 Q. Since April of 2020, correct?

5 A. Yes.

6 Q. And before that time you reported to the CEO of IBM Ginni
7 Rometty when she was in that role, correct?

8 A. Yes.

9 Q. And Mr. Foster, he now reports to the new CEO of IBM; is
10 that correct?

11 A. Yes.

12 Q. So we have the senior vice president level and above that
13 we have the CEO, correct?

14 A. Yes.

15 Q. And Mr. Lima, he was never a senior vice president,
16 correct?

17 A. Correct.

18 Q. He was always a general manager, correct?

19 A. Yes.

20 Q. And how many general managers did you have reporting to
21 you?

22 A. Around 14, 15. Something like this.

23 Q. 14 or 15 general managers reported to you.

24 And how many general managers, approximately, are
25 there at IBM?

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Zufiria - Cross

1 A. I think around a hundred.

2 Q. Just 100 or was your testimony 200 at your deposition?

3 A. I would say around 100. I don't know the exact number,
4 okay, because the general managers are Band A and Band B.

5 Q. And Mr. Lima was which band?

6 A. Band A, which is the highest band of general manager.

7 Q. And approximately how many Band A general managers are
8 there at IBM during the period of time he worked there?

9 A. Band A, I would say around 80 or 90. 80.

10 Q. How many, is it Band B, is the level below?

11 A. Yes.

12 Q. Approximately how many Band B general managers are there?

13 A. I would say around a hundred and something. Okay?

14 Q. Okay. Now, you are familiar with the complaint that was
15 filed in this case, correct, the legal complaint?

16 A. Yeah.

17 Q. And I asked you at your deposition about the statement in
18 the second paragraph of the complaint that Mr. Lima had, "a
19 seat at the table alongside the chairman and senior executive
20 officer of the company."

21 Do you recall when I asked you about that at your
22 deposition?

23 A. I remember.

24 Q. So, in the structure that you have just explained for the
25 Court, can you explain how it was that Mr. Lima had a seat at

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Zufiria - Cross

1 the table alongside the chairman and chief executive officer of
2 IBM?

3 A. Because, as you know, he was one of the high flyers in IBM,
4 he was many times invited to have dinner conversations with the
5 senior vice president and with the chairman of the company.

6 Q. Okay, but he was never senior vice president, was he?

7 A. No.

8 Q. And if you could look at, if we could bring up, it was
9 JX 85, I believe Plaintiff's Exhibit 9, your Honor, I
10 completely missed the number on that, that was the seating
11 chart --

12 THE COURT: JX 85 was Plaintiff's Exhibit 9, you are
13 correct.

14 Q. If we can bring that up, Mr. Zufiria, I see that Mr. Lima
15 is not listed on day one of the seating chart at this board
16 meeting at either the lunch or dinner, correct?

17 A. Yes.

18 Q. Because he wasn't at the board meeting at day one, was he?

19 A. I -- he was invited. I don't remember whether he attended
20 or not.

21 Q. So it is your testimony that he was invited to attend both
22 days of the board meeting; is that your testimony?

23 A. That's what I remember.

24 Q. And was there an invitation that you recall seeing that had
25 his name on it that invited him to the whole meeting as opposed

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Zufiria - Cross

1 to just for his presentation? Yes or no? Yes or no, do you
2 recall seeing an invitation?

3 THE COURT: Give him a chance to answer.

4 A. I recall that Ms. Ginny Rometty invited, wanted him to be
5 in the board and wanted to be attend the meeting with the
6 board. What I don't remember is whether he was on day 1 or
7 only on day 2.

8 Q. And then if we go to day 2 we see that he is listed at
9 table 3, correct?

10 A. Yes.

11 Q. Ginny Rometty is not sitting at table 3, is she?

12 A. No.

13 Q. Yes or no?

14 A. No.

15 Q. He doesn't have a seat alongside the chairman and chief
16 executive officer on that particular day at that dinner, does
17 he?

18 A. On that particular day, that dinner he was not sitting with
19 Ginny Rometty.

20 Q. And why is it -- it is hard to tell, this is IBM's document
21 but his name seems lighter, in other words a lighter font as
22 opposed to the other names at the table. Do you know why that
23 is?

24 A. Because he was not a senior vice president and he was
25 invited to get exposed to the board so the board members should

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Zufiria - Cross

1 know that he is one of the high flyers and they should observe
2 him.

3 Q. How come you said in your testimony on direct that at these
4 board meetings only senior vice presidents are normally
5 invited, correct?

6 A. We invite only --

7 Q. Yes or no -- excuse me. Yes or no, was that your testimony
8 on direct examination today?

9 A. If you ask me -- can you repeat the question, please, so I
10 can be precise in my answer?

11 THE COURT: I think, counsel, slow down. I have got
12 your point, I don't know how much you need to embellish it but
13 you go as long as you need to, don't let me get in your way. I
14 understand what you have communicated but try it again and give
15 him a chance to answer. We are separated by time and space
16 here so let's give him a chance to answer.

17 MR. DELIKAT: Okay.

18 BY MR. DELIKAT:

19 Q. Do you recall testifying today on your direct examination
20 that only senior vice presidents are regularly invited to board
21 of director meetings?

22 A. To board of director meetings, yes. To the strategy
23 meeting once a year of the board of directors we always invite
24 five or six general managers with high production.

25 Q. Is that a part of the strategy meeting?

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Zufiria - Cross

1 A. Yes.

2 Q. Withdrawn.

3 I am referring to Plaintiff's Exhibit 7, let's bring
4 that up, it is the cover page of the IBM board of directors
5 strategy meeting. Okay? And the record will speak for itself
6 but do you recall stating on your direct examination that this
7 deck is only shared with senior vice presidents? Today.

8 A. Senior vice presidents, yes, but participants of the
9 meeting, yes.

10 Q. And did you also recall stating on your direct examination
11 that no copies of this deck are distributed to anyone other
12 than to senior vice presidents?

13 A. Yes.

14 Q. And the agenda for that day would indicate that Lima was
15 there on a panel that you led that went on for 45 minutes on
16 day two of this particular meeting, correct? That's what the
17 agenda says? Yes or no.

18 A. He was the full second day, I remember, because he was
19 invited to the full session but he participated only in that
20 part of the session on the stage.

21 Q. And you are sure he was there the entire day of the second
22 day of the board meeting; is that your testimony?

23 A. Yes.

24 Q. What time did the board meeting end on the second day?

25 A. After the dinner that I participated.

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Zufiria - Cross

1 Q. And isn't it true that Mr. -- what is that?

2 A. I don't remember the exact hour but I finished after the
3 meal.

4 Q. And there was a dinner on the second day, not a lunch at
5 the end of the meeting, correct?

6 A. Yes.

7 Q. And isn't it true that Mr. Lima spoke for less than five
8 minutes on a panel that you led at this 2019 board of directors
9 meeting?

10 A. No. He spoke more than this because during the meeting
11 there were conversations among the senior vice president, the
12 board of directors, and the general managers were invited. The
13 meeting was interactive, it was prepared to be interactive and
14 he participated in the conversation.

15 Q. Now, when Mr. Lima held the role of GTS North America he
16 reported to you, correct?

17 A. Yes.

18 Q. But he was already in that role when you were appointed to
19 be the global head of GTS in February of 2019, correct?

20 A. Yes.

21 Q. And so you directly managed Mr. Lima for less than one
22 year, correct?

23 A. Can you repeat the question?

24 Q. Yes. You had responsibility for directly managing Mr. Lima
25 for less than one year, correct?

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Zufiria - Cross

1 A. Yes; 11 months.

2 Q. And in addition to Mr. Lima who was responsible for North
3 America there was an individual named Antonio Lubrano that
4 reported to you, correct?

5 A. Yes.

6 Q. And Mr. Lubrano held the title of GTS for South America;
7 isn't that true?

8 A. Yes, Latin America; yes.

9 Q. And Mr. Lubrano held the title of the head of GTS for South
10 America for the entire time that you supervised Mr. Lima who
11 was the head of North America, correct?

12 A. No.

13 (Continued on next page)

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Zufiria - Cross

1 BY MR. DELIKAT:

2 Q. There was a change in Mr. Lubrano, correct?

3 A. There was a change in Mr. Lubrano. If I remember properly,
4 it was at the end of the third quarter.

5 Q. And he was replaced by an individual named Ricardo Gozzoli,
6 who was given the title of head of GTS for South America,
7 correct?

8 A. Head of GTS for Latin America.

9 Q. For Latin America, OK, and that would include Central
10 America, correct?

11 A. Yes.

12 Q. And it was Mr. Lubrano and Mr. Gozzoli who had
13 responsibility for GTS clients in South America, correct?

14 A. Yes.

15 Q. On your direct examination, you testified quite a bit about
16 IBM confidential information. What is your understanding of
17 the term IBM confidential information?

18 A. It is the information that is not available to anybody
19 outside IBM because it's core for our competitive advantage.

20 Q. Information not available to anyone outside of IBM, and
21 then I couldn't hear the rest.

22 A. And it's basic for our competitive advantage.

23 Q. And it's for your competitive advantage, correct?

24 A. Yes. Yes.

25 Q. OK. One more foundational question before I get into this.

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Zufiria - Cross

1 You've spoken about GTS and your responsibilities for being the
2 global head of that, but you also mentioned another acronym
3 GBS, correct?

4 A. Yes, Global Business Services is another part of IBM that
5 does consulting and works on other applications.

6 Q. And GTS and GBS until recently were run as separate
7 business units, correct?

8 A. Yes.

9 Q. And they were combined, GTS and GBS were combined and put
10 under the overall direction of Mr. Mark Foster, correct?

11 A. We have not done the match yet, but that was the intent to
12 make our business stronger.

13 Q. Right. And when that happens, you will be reporting to
14 Mr. Foster who will be the head or is already the head of this
15 combined business, correct?

16 A. Correct.

17 Q. And as we said before, Mr. Foster is a senior
18 vice-president, correct?

19 A. Correct.

20 Q. And just to confuse it a little bit more, the combined GTS
21 and GBS is now known as IBM Services, correct?

22 A. Correct.

23 Q. Now, you recall in your deposition I asked you questions
24 about GTS and GBS being combined to form IBM Services, correct?

25 A. Correct.

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Zufiria - Cross

1 Q. And you testified that the reasons why GTS and GBS were
2 combined would be considered to be confidential IBM
3 information, correct?

4 A. Some of the reason, yes. Other reasons, no.

5 Q. And do you recall your testimony at the deposition?

6 A. I don't recall it exactly. There are elements that we
7 publicize, we say. But there are elements we don't publicize
8 that have to do with our economics of investments and
9 strategies that we don't publicize because they are to our
10 competitive advantage.

11 MR. DELIKAT: I'm going to bring up a video clip from
12 your deposition used for impeachment purposes, your Honor.

13 THE COURT: I think you should at least let counsel
14 know what page and line you're going to in case he needs to
15 point the witness to.

16 MR. DELIKAT: Yes, plus the transcript will run right
17 under it too. It's deposition transcript page 18, line 15 to
18 page 19, line 2 of Mr. Zufiria and -- do you have the video
19 clip here? Yes.

20 Q. We're going to play the video clip from the deposition and
21 see what you said there, OK?

22 A. Yes.

23 (Videotaped deposition and transcript played)

24 Q. Having heard your testimony, is your recollection refreshed
25 that you refer to the reasons behind the combination of GTS and

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Zufiria - Cross

1 GBS to be confidential insider information?

2 A. Yes. As I said, there are elements that we publicize that
3 say we are going to get stronger, we go better to the market,
4 but the reasons why we do it internally, how they come explains
5 the benefit it brings to us, not only to the client. That
6 would be confidential information.

7 Q. So, if a IBM senior executive like Mr. Lima publicly
8 discussed the reasons surrounding the combination of GTS and
9 GBS, that executive would be disclosing confidential IBM
10 information, correct?

11 A. If it uses the internal part, there are things we don't
12 share, yes.

13 THE COURT: If it's the reason we don't share. I
14 think that's what the witness said.

15 MR. SIGNORACCI: If he uses the internal part the
16 reasons we don't share.

17 THE COURT: I see.

18 Q. And if a senior executive like Mr. Lima would disclose the
19 reasons behind an acquisition like Red Hat disclosed them in a
20 public forum, would that be disclosing confidential
21 information?

22 A. There are many elements of how Red Hat is in position that
23 has to do with the economics of the idea that --

24 Q. That wasn't my question. It's a yes or a no.

25 A. Correct.

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Zufiria - Cross

1 Q. If a senior executive like Mr. Lima disclosed the reasons
2 behind the Red Hat acquisition, would that be the disclosure of
3 confidential information by that individual?

4 A. Yes.

5 Q. OK. What about information how the Red Hat acquisition
6 would be used going forward after the acquisition, if an
7 individual like Mr. Lima disclosed that, would that be an
8 improper disclosure of confidential information?

9 A. For example, if he discloses our investment plans in IBM
10 product associated to Red Hat, that will be confidential
11 information.

12 Q. And if a senior executive like Mr. Lima disclosed the
13 three-year strategy plan for the combined GBS and GTS
14 businesses, would that be an improper disclosure of IBM
15 confidential information?

16 A. If he discloses in definite parameters what we don't share
17 with the market, yes.

18 Q. And how much of these things do you end up sharing with the
19 market. So, if you have a three-year business plan, what's
20 shared with the market and what's not shared with the market?

21 A. We can share that we are going to develop some
22 functionality for our product, but we don't share how much
23 money we are investing and what basic technology we are using
24 to create that functionality.

25 Q. Do you know what the cognitive enterprise initiative is at

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Zufiria - Cross

1 IBM? Yes or no.

2 A. Sorry, I didn't hear. The voice disappeared. Sorry.

3 Q. Yes. Do you know what the cognitive enterprise initiative
4 is at IBM?

5 A. Yes, I know it. Yes.

6 Q. In fact, that was mentioned in one of the documents that
7 was marked and requested to be sealed by your lawyer. Do you
8 recall seeing it on one of the documents that came in, the
9 cognitive enterprise initiative?

10 A. Yes.

11 Q. And is that a confidential initiative of IBM?

12 A. What we are trying to do is.

13 Q. Yes or no. Is it a confidential business initiative of
14 IBM?

15 A. No, the business initiative is not confidential. No.

16 Q. OK. And what about the Garage initiative. What's that?

17 A. It's a methodology that we have that we offer to clients.

18 Q. And if a specific Garage initiative was disclosed by a
19 senior executive like Mr. Lima outside of IBM, would that be an
20 improper use of IBM confidential information?

21 A. Yes, if we disclose the method, yes.

22 Q. OK. I'm going to direct your attention -- Mark, did you
23 hand our exhibits up to the Court?

24 THE COURT: Not yet.

25 MR. DELIKAT: Your Honor, I forget what number we're

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Zufiria - Cross

1 up to on the defendant's side.

2 MR. THOMPSON: 4. I think we did A, B and C.

3 Q. It's a document that was used on his deposition. It was
4 marked as Exhibit D-1 at the witness's deposition.

5 MS. VELAZQUEZ: I have it then.

6 THE COURT: Another set would be helpful to the Court
7 that would be great. A, B and C. So far so I think we're up
8 to D.

9 MR. DELIKAT: D as in defendant, your Honor.

10 THE COURT: D as in defendant.

11 Q. Mr. Zufiria, do you have in front of you?

12 THE COURT: Wait. Wait. I haven't admitted anything.
13 D is JX-35 for identification. D for identification, JX-315.

14 MR. DELIKAT: 315, correct.

15 THE COURT: Sorry, 315. Is there any objection to
16 Joint Exhibit 315 going into evidence?

17 MR. SIGNORACCI: No, your Honor.

18 THE COURT: D previously marked JX-315 is in evidence.

19 (Defendant's Exhibit D received in evidence)

20 THE COURT: You may proceed.

21 Q. Mr. Zufiria, do you remember I questioned you about this
22 document at your deposition?

23 A. Could you please turn it up because I cannot read it.

24 Q. Why don't you blow up the top block there so he could see
25 it, just that, and let me help you if it is hard to see. It's

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Zufiria - Cross

1 by a company called Alpha Sense, Inc.?

2 A. Yes.

3 Q. And it says, highlighted document, and so the highlights
4 that you see on this document are by them. And then it says
5 International Business Machines Corp. It says, International
6 Business Machines Corp at the JP Morgan Technology Media and
7 Communications Conference (virtual) on May 13, 2020. Do you
8 see that?

9 A. Yes.

10 Q. And you understand what a virtual conference is in the days
11 of COVID-19, correct?

12 A. Yes.

13 Q. And did you listen into this particular conference --

14 A. No.

15 Q. -- when it was carried virtually?

16 A. No. No.

17 Q. OK. And if we can go down a little bit further to who the
18 participants was, it says corporate participants, note key
19 speaker, to speak first and then conference call participants.
20 It has the date of this recently May 28, 2020. It says, edited
21 transcript of International Business Machines Corp.
22 presentation on May 13, and the participants were Mark Foster.
23 OK. That's your boss, correct?

24 A. Yes. Yes.

25 Q. Senior VP of IBM Services. Correct?

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Zufiria - Cross

1 A. Yes.

2 Q. And you see below that is Mr. Huang, H-U-A-N-G's name. He
3 is an analyst with JP Morgan Chase. Do you see that?

4 A. Yes.

5 Q. And so if we can go first to page 2 and the paragraph
6 begins, if you can highlight it. And let me just say first
7 it's a question-and-answer format. Do you see that Mr. Huang
8 as the analyst is asking Mr. Foster, who is the head of IBM
9 Services, a series of questions and those are contained in this
10 transcript. Do you see that?

11 A. I see, but I cannot read it. When you said it if you could
12 read it, please.

13 Q. OK. And so is the question -- the first question that
14 begins, if you could just highlight the first question that
15 begins and the answer down to the end of the answer, which is
16 right there before the next question. There is a question by
17 Mr. Huang, you see what he asked there, given the success and
18 how quickly you did that, referring to the combination,
19 resulting in an organization of 240,000 individuals, and he
20 asks for Mr. Foster's thoughts on that. Do you see that?

21 A. Yes.

22 Q. And then let's go down just two paragraphs into his answer.
23 I'm sorry, the next paragraph, "We have been able to see." And
24 Mr. Foster is describing Garage methodology, he says, which is
25 our methodology for working closely on co-creational models

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Zufiria - Cross

1 with our clients in a physical environment. And if you go on
2 there, he talks about a particular client. He names a client,
3 Frito-Lay, correct?

4 A. Yeah.

5 Q. Frito-Lay is the snack --

6 A. Yes.

7 Q. -- company to your understanding?

8 A. Yes.

9 Q. And that's an important client for IBM?

10 A. Yes.

11 Q. And then Mr. Foster goes on to explain what exactly the
12 work was done on the Garage for Frito-Lay. He says, it's one
13 of the biggest Garages we have. It has sort of 11 concurrent
14 streams, transforming the way they do their customer-service
15 thinking. And we were able to not only maintain that in the
16 virtual world very closely but actually leverage it now to be
17 even more dynamically facing a whole bunch of helping Frito-Lay
18 resolve for its day-to-day supply chain dynamics in a very,
19 very powerful way.

20 Now, don't you think a competitor would be interested
21 in hearing about the specific work that IBM is doing for
22 Frito-Lay under their Garage methodology?

23 A. Yes, a competitor would be interested. Yes.

24 Q. And Mr. Foster here is naming the client and calling it one
25 of the biggest Garages we have and describing the work that was

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Zufiria - Cross

1 done for them, correct?

2 A. It was correct describing the outcome of the work.

3 Q. And the Garage methodology, is that a proprietary
4 methodology for IBM?

5 A. Yes.

6 Q. And do you think it was appropriate for Mr. Foster in a
7 public forum to be talking about IBM's proprietary Garage
8 methodology and naming a client that had a large role in that
9 business?

10 A. Mentioning the client is in agreement with the client,
11 mentioning the outcome of the work is an agreement with the
12 client. Mentioning how is the methodology. How the
13 information is managed in the meetings to is confidential.

14 Q. Do you know for a fact that Frito-Lay agreed that
15 Mr. Foster could make a public disclosure about the business
16 that IBM was doing for them involving this Garage methodology.
17 Do you know that for a fact? Yes or no.

18 A. I know by a fact -- I don't know it, but I assumed yes,
19 because we do it always like this.

20 Q. Let's go on to a couple of other clients that Mr. Foster
21 mentions in this interview. Let's go to page 3. And if we can
22 go to the paragraph that begins, "So I think we have been
23 able," it's in the middle, and highlight that paragraph out.
24 Everybody sees that? OK. Good. In that particular paragraph,
25 take a look at it, I asked you questions about it at your

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Zufiria - Cross

1 deposition, so I believe you're familiar with it.

2 A. Yes.

3 Q. Mr. Foster mentions a few other clients. He mentions
4 Credit Mutuel, correct? Do you see that?

5 A. Yes.

6 Q. Is that one of IBM's integrated accounts?

7 A. I think yes now it's an integrated account. It's now one
8 of the integrated accounts.

9 Q. It's one of 77 or 79 biggest IBM accounts, correct?

10 A. I believe so, yes. I don't know that it is, but I believe
11 so.

12 Q. And do you know for a fact whether Credit Mutuel consented
13 to the disclosure of the kind of work that IBM is doing for
14 them in the application of Watson and virtual assistance to
15 their banking assistance. Do you know for a fact whether they
16 consented to that?

17 A. Yes, I know it. In this particular case, I know it.

18 Q. And did you learn that after your deposition when I asked
19 you that question?

20 A. No, because I remember that when I was running Europe, we
21 signed a big agreement and IBM asked permission and we
22 publicized this in our outside medias.

23 Q. So, when a big deal is signed like this with Credit Mutuel
24 for doing this kind of work, there typically is a public
25 release that this transaction was signed with that particular

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Zufiria - Cross

1 client, correct?

2 A. Correct, there is an agreement that is reached on how to
3 make (inaudible).

4 Q. That was also with respect to the Anthem transaction,
5 correct, that there was a public announcement concerning that
6 correct?

7 A. I remember, yes.

8 Q. So it's your belief that Mr. Foster was not improperly
9 disclosing IBM confidential information when he named the
10 client and talked about the specifics work that IBM was doing
11 for them, correct?

12 A. Yes, correct.

13 Q. And let's go down further in that paragraph. There's
14 another client mentioned, Providence Healthcare. Do you know
15 whether or not Providence Healthcare consented to the
16 disclosure of the particular kind of work in a particular
17 location that IBM was doing for them? Yes or no.

18 A. I -- no, I don't know it.

19 Q. OK. And you see there Mr. Foster is openly sharing the
20 fact of what they're doing for Providence Healthcare, helping
21 them hire some 4,500 nurses a month to use that capability to
22 hire people remotely, OK? And this, of course, is in the
23 context of a May interview during COVID-19 when many healthcare
24 institutions are vigorously competing for the scarce medical
25 talent that's available, correct?

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Zufiria - Cross

1 A. Yes.

2 Q. And do you think it is confidential business information of
3 Providence Healthcare to reveal the fact that you were able to
4 come up with a program that allows them to hire remotely.
5 Isn't that confidential information?

6 A. I don't know if it is confidential for Providence
7 Healthcare. And I don't know their agreement. Nobody we have
8 an agreement with a client before we published any data of any
9 public relationship in all of the business that we do.

10 Q. And so what would you say is the percentage of the
11 transactions that you close with clients like this Providence
12 Healthcare or Credit Mutuel that are actually publicly
13 disclosed to the press that a deal has been done?

14 A. I don't know the percentage. OK, I don't know. We try to
15 make it as big as possible, but I would not be able to give you
16 a percentage.

17 Q. OK. Now, you recall when we started this line of
18 questioning, we brought up your deposition testimony where you
19 said it would be inside information to disclose the reasons
20 behind the combination of GTS and GBS. Do you recall that
21 testimony?

22 A. Some of the reasons. Not all.

23 Q. OK. So let's go down to the next question, if you could
24 highlight that the next question on the page which begins
25 "right." So we will highlight the question first. And

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Zufiria - Cross

1 Mr. Huang is saying to Mr. Foster, "Right, so helping clients
2 having full breadth obviously is important, which I think is a
3 good segue to my next question, which was in April, you were
4 named the head of IBM Services which brings together GTS and
5 GBS into one place. Why combine the two, Mark? I've been
6 getting that question from investors. It seems like obviously
7 a big move. Why is it important to do now?"

8 Do you see that question?

9 A. Yes.

10 Q. And before we get to the answer on that, let's ask you a
11 few other questions. Was the combination of GTS and GBS
12 discussed in many senior leadership team meetings at IBM before
13 it actually happened?

14 A. Yes.

15 Q. And were the reasons behind the combination debated back
16 and forth by IBM leaders before it actually happened?

17 A. Yes, many conversations and we discussed the reasons many
18 times.

19 Q. OK. And so let's look at the answer then. Let's blow up
20 the answer that Mr. Foster gave to "Why combine the two, Mark?"
21 OK, and why don't you just take a look at that. I won't read
22 the whole thing into the record.

23 THE COURT: It's in the record.

24 MR. DELIKAT: I won't read it.

25 THE COURT: You don't need to read it. It's here

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Zufiria - Cross

1 already.

2 Q. Now, Mr. Foster here mentions the combined scale of the
3 business, 240,000 people. Do you believe that giving out, you
4 know, the numbers of people in combined organizations within
5 IBM is confidential business information?

6 A. Not to this level. To the level of the aggregate, no.

7 Q. And so if Mr. Lima when he was interviewing for Microsoft
8 told them that he managed an organization of X thousand
9 employees, would he have been revealing IBM confidential
10 information?

11 A. If he is referring to a segment of the business, yes,
12 because we never published the sizes of the segments of the
13 business.

14 Q. But it's OK for Mr. Foster to refer to the combined
15 population of two other business units?

16 A. Yes, because this is a segment reporting external that we
17 are transferring to the level GTS and GBS start-up services.

18 Q. Where do you draw the line between size of organization
19 that it's OK to talk about publicly and size of organization
20 that it's confidential information and it's not OK to talk
21 about publicly?

22 A. I would say the segment knew that we report to an
23 aggregated level.

24 Q. But do you recall that during your deposition you recalled
25 that revealing the size of a business unit would not be

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Zufiria - Cross

1 confidential information? Do you recall that information?

2 A. Yes, for a portion of the business.

3 Q. This is not all of IBM. This is just a business unit,
4 correct?

5 A. GTS is a business unit, GBS is a business unit.

6 Q. And now turning to page 4, more from Mr. Foster about a
7 combining the two, and if we go down to the middle of that
8 page. Question: Yes, so I know. If you could blow that up.

9 OK. Mr. Huang persists, and at the end of it, he
10 says, "What's the end game for GTS in your mind as you now have
11 that under your leadership and bringing it together with GBS?"
12 Do you see that? Do you see that question?

13 THE COURT: I do.

14 A. Yes.

15 Q. And so now Mr. Huang is probing more about the reasons
16 behind the GBS and GTS combination. Is that correct?

17 A. Yes.

18 Q. Let's blow up the answer Mr. Foster gave. The second
19 paragraph to that. And here is the question and the second
20 paragraph, he says, "GTS has been on a journey of its own
21 reinvention." What's that about what transformation was GTS
22 going through?

23 A. The transformation of moving into a much more cloud-centric
24 world and increasing the automation in the business.

25 Q. In fact, he said, "It has started from a more on premise

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Zufiria - Cross

1 legacy, in other words, private cloud, moving to a world of
2 cloud" correct?

3 A. More than private cloud. I would say legacy assistance to
4 move it from the data assistant to private cloud and to public
5 cloud.

6 Q. Right. But IBM is starting from where it is and trying to
7 move, his words, "to a world of cloud." Do you see that? He
8 says, "moving to a world of cloud."

9 A. Yes. To the world of cloud, yes. We are moving to the
10 world of cloud, yes.

11 Q. And so here he is revealing the reasons behind why
12 combining GTS and GBS will allow IBM to be more successful in
13 the world of cloud, correct? He's given the answer there?

14 A. Yes, he's saying some of the reasons, not all of them.

15 Q. OK. Now, let's go down to the next paragraph of his
16 answer. In this paragraph, he starts talking about Red Hat
17 Open Shift capabilities. And if we go to the sentence, "And I
18 see the capacity for GTS." He writes -- he says, "And I see
19 the capacity for GTS, in particular, to really give us an
20 opportunity to see some of the major new control points around
21 the infrastructure architecture of the future, particularly if
22 we can leverage things like our Red Hat Open Shift
23 capabilities, our multi-cloud manager capabilities in new areas
24 such as some complex multi-cloud data management, complex
25 multi-cloud security management."

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Zufiria - Cross

1 So, here Mr. Foster is freely talking about how Red
2 Hat is going to be integrated into the IBM business so that it
3 can compete more successfully in the cloud services space,
4 correct?

5 A. No. It's not how we are going to break Red Hat into IBM.
6 It's how we are going to use Red Hat to do better work in our
7 client. It's not about integration.

8 Q. He uses the word leverage. He says, "If we can leverage
9 things like our Red Hat Shift capabilities into these things."
10 So, he's talking about how Red Hat is going to be leveraged or
11 used by IBM in order to compete more successfully with the
12 market leaders in cloud, correct?

13 A. Yes, the same way that another company also uses Red Hat to
14 do the same thing because Red Hat is run independently.

15 Q. And then if we go to the next question, and this goes on
16 for several pages, but we'll just get to the highlights here.
17 Mr. Huang says, "We finally just mentioned Red Hat. Well, you
18 touched upon it, so let's expand on it. So you went through
19 the -- bringing together GTS and GBS. How does Red Hat then
20 fit on top of all of that?"

21 And Mr. Foster gives an answer there. Can we blow up
22 his answer? And it goes on to the next page. So if you could
23 read that?

24 A. Yes.

25 Q. And so Mr. Foster in response to the analyst's question at

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Zufiria - Cross

1 this conference is explaining how Red Hat is going to be used
2 in the overall organization in order to position you better for
3 the emerging, the coming in the future hybrid cloud work,
4 correct?

5 A. Yes.

6 Q. And do you think he's sharing confidential information
7 about how Red Hat would be used by IBM in the future after its
8 acquisition when he told the analyst that in an open
9 conference?

10 A. No. No.

11 Q. OK. Let's go on.

12 THE COURT: Hold on one second. Hold on one second.
13 I want to get a sense of timing, so I can let the court
14 reporter know and courthouse staff know.

15 MR. DELIKAT: I certainly won't finish cross, but I
16 can certainly finish this document and go on to a few other
17 things.

18 THE COURT: Let me say this. I'm not going to
19 interrupt your cross. You're free to cross until the cows come
20 home. However, I think I have the point, and I think it would
21 go a little more quickly and efficiently if you highlighted for
22 me the language that you think bespeaks a confidentiality or
23 IBM confidential piece of information. The witness seems to be
24 saying to me in response to your questions, "These answers are
25 not confidential because they're at a high level." This is an

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Zufiria - Cross

1 interview at a communications media JP Morgan conference. I
2 have your point as loudly and clearly as you need me to
3 understand Mr. Delikat.

4 MR. DELIKAT: OK.

5 THE COURT: But it really doesn't ultimately answer
6 the ultimate question which I have here, which is does this
7 defendant have IBM confidential information or trade secrets
8 that he's going to use when he gets to Microsoft should I
9 permit him to go there in violation of the agreement. Your
10 point, however, is very well taken, and I get it. I'm with you
11 on it.

12 MR. DELIKAT: OK.

13 THE COURT: So maybe we could just tighten it up a
14 little and get to the language.

15 MR. DELIKAT: I will go to some other areas where more
16 detail is exposed.

17 THE COURT: Terrific. We're going to break here, I
18 would say at -- we're going to have to break at 5:00 because
19 actually I have a preliminary injunction group waiting for me
20 to issue an order for them, so I want to be able to get that
21 order signed. So we can either take a break for a minute or
22 we'll just stop at 5:00. I think we'll just stop at 5:00
23 today, and we'll start again at 9:30 tomorrow. Does that work
24 or would you like to go further, counsel?

25 MR. DELIKAT: We're happy to go further after. It's

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Zufiria - Cross

1 up to your Honor.

2 MR. ATKINS: Your Honor, we're prepared to go for as
3 long as you're willing to have us.

4 THE COURT: I'm willing to have you for as long as you
5 can ask questions and I can hear answers, but I have court
6 reporters and staff that are here only for limited parts of the
7 day. So, I appreciate that. I would take up you up on an
8 opportunity maybe to talk you in a socially distanced distance
9 a couple of you, one or two from each side after we conclude
10 today's business for a few minutes. I think that might be
11 helpful. But I'm not going to keep the reporters here.

12 MR. ATKINS: So, for other witnesses who are waiting
13 in the wings or a witness waiting in the wings --

14 THE COURT: I don't think Mr. Delikat is anywhere near
15 finished, so I don't think we are going to conclude with this
16 witness today. We will bring him back in the morning. He will
17 pick up what he has on cross. I assume there is some redirect
18 coming, and then we will go to the next series of witnesses. I
19 would encourage you to tighten up the presentations because we
20 really are on a tight schedule here, and we spent a fair amount
21 of time on the back-and-forth, which I perfectly understand.
22 So I don't know how much we need to --

23 MR. ATKINS: So, your Honor, we are going to conclude
24 at 5:00.

25 THE COURT: We are going to conclude at 5:00. I would

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Zufiria - Cross

1 ask a couple of you to come into the robing room with me
2 afterwards. I think we can socially distance. I can't have
3 all of you, but I would like to talk to one from each side and
4 maybe two, OK?

5 MR. ATKINS: Thank you, your Honor.

6 THE COURT: Go ahead.

7 MR. DELIKAT: Your Honor, let me just state on the
8 record, we think this is critical to the point you raised as to
9 whether or not the general information Mr. Lima was exposed to
10 was anything more than what is in here, OK?

11 THE COURT: And I get it, and I'm with you, and I
12 appreciate the point. It's loud and clear.

13 MR. DELIKAT: Let me just call out a couple of other
14 areas on this particular document.

15 THE COURT: By the way, I'm not cutting you off. You
16 do what you need to do.

17 BY MR. DELIKAT:

18 Q. If we go to page 5, the paragraph that begins, "And it's
19 going to be multi-cloud," if you could highlight that.

20 Mr. Zufiria, this is more about Red Hat. Open Shift
21 is part of Red Hat or how it's known, correct, its methodology?

22 A. Yes, it's part of the product of Red Hat.

23 Q. If you look at this paragraph here, it goes into
24 considerable more detail as to how Red Shift (sic) is going to
25 be leveraged or used by IBM, correct?

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Zufiria - Cross

1 A. Is how Red Hat is going to be used by clients, not only
2 IBM. This is an value for Open Shift is described here. It is
3 a description of the product.

4 Q. IBM's mission in acquiring Red Hat was to increase its
5 revenue by having a more complete service offering, correct?

6 A. No. It was trying to help clients to construct the future
7 infrastructure in a much more efficient way.

8 Q. And so it's all about selling these services to the
9 clients. That's what it's all about, correct?

10 A. It's about selling a protection, selling a product and
11 selling services, OK? Selling a product and selling services.

12 Q. Now, Mr. Lima was not a technical employee, was he?

13 A. No.

14 Q. Mr. Lima was in services and in a sales function
15 essentially, correct?

16 A. Could you repeat the question? I didn't hear it.

17 Q. He was in what you call as services, correct?

18 A. He was in GTS. He was services. He was also working in
19 America before so he knew about products, hardware, software,
20 and all the mentions of services of IBM.

21 Q. But when he worked for you, he was in services, correct?

22 A. Yes, correct.

23 Q. And just one more paragraph after this one that we have
24 open, and more about Red Hat creating a new architectural
25 standard that you like, and he gives more details around that.

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Zufiria - Cross

1 Do you think the competitor would be interested in hearing
2 about what your plans are for how Red Hat can help your
3 customers?

4 A. Well, I think this is public knowledge now because this is
5 what we used to market Red Hat. We say what the product is
6 able to do for our client.

7 Q. Just one more the document is going to be in evidence, but
8 let's go down to the next answer where it begins, "Yes,
9 Tien-Tsin." So, in answer to this question, Mr. Foster is
10 talking about the fact that the three-year strategy planning
11 session and presentation was done to Arvind. Who is Arvind and
12 Ginni?

13 A. Arvind is the new CEO.

14 Q. And who is Ginni?

15 A. Ginni is the former chairman -- current chairman and
16 overseer of IBM.

17 Q. So, what happened at this meeting was certainly
18 confidential IBM business information, correct?

19 A. Inside the meeting there was confidential information.
20 Having the meeting is not confidential.

21 Q. I'm not sure I understand that. The meeting was not a
22 confidential information, the delivery of the three-year
23 strategy plan?

24 A. No. The information that was mentioned in the meeting was
25 confidential.

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Zufiria - Cross

1 Q. And he goes on to talk about what the highlights were of
2 the three-year strategy planning session.

3 A. Yeah.

4 Q. And what is the big value pool, its intelligent work flows.
5 What is that?

6 A. Value pool intelligent work flows is that we often said
7 that we believe that corporations should introduce artificial
8 intelligence in the work processes, in the work flow process.
9 That's what we call the cognitive enterprise.

10 Q. OK. And if we go to the next page, and this is the last
11 item on page 6. In the answer, in the middle of the page
12 "Well, first of all." And then the next paragraph, here
13 Mr. Foster is talking about more acquisitions, correct? He's
14 talking about the Bluewolf acquisition. What was that about?

15 A. This is an acquisition that we had several years ago.

16 Q. And what about Promontory which was another acquisition?

17 A. Yeah, I don't remember, but Promontory is another one, yes.

18 Q. And then in the next paragraph he goes to talk more about
19 Red Hat and how that fits into IBM's acquisition strategy,
20 correct?

21 A. Yes.

22 Q. Now, do you recall testifying -- these are yes and no
23 answers. We'll stop at 5:00, your Honor?

24 THE COURT: Yes.

25 BY MR. DELIKAT:

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Zufiria - Cross

1 Q. You testified at your deposition that in 2019, IBM's market
2 share in new public cloud services was approximately three
3 percent, correct?

4 A. Correct, in the total public cloud, not in the enterprises.

5 Q. But the public cloud you testified was three percent,
6 correct?

7 A. Yes. And give me the definition of public cloud.

8 Q. Well, you were asked the question, you said three percent,
9 and then you also testified that Microsoft's market share of
10 the public cloud was somewhere between 25, 30 to 35 percent,
11 correct?

12 A. Correct, in the definition, in the broad definition of
13 public cloud, not in the enterprise, and I insisted on that
14 point because those are different markets.

15 Q. It's true IBM closely follows Microsoft activity in public
16 cloud, correct?

17 A. No, that's not correct.

18 Q. OK. Let's take a look at Exhibit that your counsel put in,
19 Plaintiff's 10. Let's bring that up. Can you highlight the
20 below -- that's not the right one. It's JX-342.

21 THE COURT: 11.

22 Q. I'm sorry, that was 11. Thank you. So, Plaintiff's 11,
23 JX-342, OK? If we could highlight on September 21, the Ginni
24 Rometty response. So, Ginni is writing and she is writing here
25 "And note my point. Do what Microsoft does even if you also

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Zufiria - Cross

1 give some cloud for free if necessary, but if it is not used,
2 they owe us."

3 So, it's fair to say Ginni Rometty was the CEO was
4 following what Microsoft was doing in terms of it's "let give
5 away some free cloud to get more business," correct?

6 A. Yes, correct. Yeah.

7 Q. So, when I asked you the question whether or not it was
8 true that IBM closely follows Microsoft activity and how it
9 sells its public cloud, and you said no, how would Ginni know
10 this if she didn't closely follow it?

11 A. Yes. Sorry, I misunderstood. I said whether we followed
12 the strategy. I mean, I understood we said we do what they do
13 to catch them up or we understand what they are doing, and we
14 analyze what they are doing. If follow means understand and
15 analyze what they are doing, yes. They are our competitor, but
16 we don't copy what they do.

17 Q. And the way this works, Mr. Zufiria, there are GTS clients
18 in private cloud that do not use IBM for their public cloud
19 use, correct?

20 A. Yes, there are a few, yes.

21 Q. In fact, Savadel (ph), Broad Ridge, TSB were all IBM
22 clients in the private cloud, their own cloud, correct?

23 A. Yes, there we have many clients in public cloud because all
24 clients are consuming --

25 THE COURT: We've lost you. All clients are consuming

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Zufiria - Cross

1 in the future is what was the last the court reporter got down.

2 A. Yeah, we believe that in the future clients will consume
3 part of their work, the work loads will be international
4 assistance. Other part will be in private cloud another part
5 will be in public cloud. How fast and how you balance the
6 different scenarios with the kind of the industry and the
7 status of a given client. At this moment, international
8 services industry, there are more consumption of private but
9 there is the movement to come to public.

10 Q. Let's finish up. If we could go back to the demonstrative
11 that was created by your lawyers, Plaintiff's Exhibit 4. So
12 let's try to break this down and make it easy. The cloud is
13 really stored space. It's like a warehouse, right? It's where
14 data and software and other things that companies use for IT is
15 stored, correct?

16 A. Yes, correct.

17 Q. And these warehouses, you know, can be huge facilities
18 where many pieces of equipment are running to provide that
19 cloud service, correct?

20 A. Correct.

21 Q. And clients put their confidential information into this
22 storage facility so they request use it, manage it and
23 otherwise have it available for their own purposes, correct?

24 A. Some of them, if they're allowed by the regulation and they
25 give enough guarantees of security. And by the way this is the

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Zufiria - Cross

1 strength of hybrid public cloud. That's why it's called
2 enterprise.

3 Q. So, the cloud business is selling storage space, correct?

4 A. That's one of the businesses.

5 Q. Let me ask the next question. We're running out of time.

6 Let me ask the next question. Let's look at this document
7 here. It shows IBM to the left had an integrated we-do-it-all
8 business, correct?

9 A. Yeah.

10 Q. But if you look at the cloud providers like Amazon,
11 Microsoft and Google, they are providing the cloud, but it's
12 other companies that are competing with IBM for the service
13 businesses: Accenture, DXC Technology, Cognizant, HCL,
14 Infosys, Tada (ph) -- these are the Indian companies -- and Why
15 Pro. Do you see that?

16 A. Yes, but services bid companies bid for services.

17 Q. Right, and Microsoft does not have its own services
18 capabilities. It works with independent companies that provide
19 that service, correct?

20 A. Yes, correct.

21 Q. And Microsoft does not have IT service companies like the
22 companies from India. It works with those as part of a
23 package, but those are all independent companies. Is that
24 correct?

25 A. Correct.

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Zufiria - Cross

1 Q. And so the competition on services are really with the
2 companies that are listed here that are not the cloud
3 providers, the competition on services, correct?

4 A. Yeah, but GTS not a cube at this time to the other
5 services' players because we pay also infrastructure. We own
6 the assets. The other players, they don't own the assets.
7 They don't own data centers. We own the data centers. We have
8 our own cloud, and we compete with them. Therefore, we compete
9 always with a combination of public to players and services to
10 players because we have the totality. We build a new house,
11 and we do the moving of the furniture to the new house while
12 our competitors, some of them built the house, and others do
13 the movement. We built the house; we do the movement.

14 Q. If Mr. Lima went to Accenture, you'd have the same problems
15 then if he went to Microsoft, correct?

16 A. Similar problems.

17 Q. If he moved to India and he went to work for Infosys, you
18 would have the same problems with him working on Infosys on IT
19 service companies because you do that business, correct?

20 A. Correct.

21 Q. But Microsoft does not do the IT service business or the
22 global technology service, correct? Yes or no.

23 A. Incorrect.

24 Q. OK. We'll end here, your Honor.

25 A. It's incorrect.

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Zufiria - Cross

1 THE COURT: Mr. Zufiria, we're going to stop the
2 cross-examination now. It's 5:00 in New York, and I need to
3 let the reporters go, and I need to let the courtroom deputy
4 go.

5 I'm hoping that you won't have any conversation with
6 anybody while you're in the middle of your cross-examination.
7 That would run afoul of the basic premise that the defendants
8 are entitled to cross-examine you until they are completed
9 without interference or conversation with anybody: Not your
10 significant other, certainly not IBM's counsel. The only
11 conversation you could have is if something came up in your
12 mind about a privilege or you're worried about an
13 attorney-client privilege or something of that ilk, very
14 serious in your mind, maybe then it would be OK. But otherwise
15 I would ask you on your oath to talk to no one until we
16 reconvene tomorrow morning. Is that crystal clear?

17 THE WITNESS: Your Honor, I understand.

18 THE COURT: Perfect. Thank you. All right. We will
19 stand in recess until 9:30 tomorrow morning.

20 I would ask counsel to give me a minute. I need to
21 sign an order, and then I would like to speak to one or two
22 from each side socially distanced. We can either do it here
23 and ask everybody to go outside or you're welcome into my
24 robing room. We'll just space out. Does that work?

25 MR. ATKINS: Yes, your Honor.

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Zufiria - Cross

1 THE COURT: Thank you.

2 (Hearing adjourned to July 22, 2020 at 9:30 a.m.)

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